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COMMITTEE AGAINST TORTURE

Fourth session

SUMMARY RECORD OF THE 48th MEETING

Held at the Palais des Nationa, Geneva,
on Thursday, 26 April 1990, at 10 a.m.

Chairman: Mr. VOYAME

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(c) Consideration of consolidated guidelines for the initial part of the reports of States parties under international human rights instruments

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Any corrections to the records of the meetings of this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

The meeting was called to order at 10.10 a.m.

ACTION BY THE GENERAL ASSEMBLY AT ITS FORTY-FOURTH SESSION:

(a) ANNUAL REPORT SUBMITTED BY THE COMMITTEE AGAINST TORTURE UNDER ARTICLE 24 OF THE CONVENTION

(b) EFFECTIVE IMPLEMENTATION OF INTERNATIONAL INSTRUMENTS ON HUMAN RIGHTS, INCLUDING REPORTING OBLIGATIONS UNDER INTERNATIONAL INSTRUMENTS ON HUMAN RIGHTS

(c) CONSIDERATION OF CONSOLIDATED GUIDELINES FOR THE INITIAL PART OF THE REPORTS OF STATES PARTIES UNDER INTERNATIONAL HUMAN RIGHTS INSTRUMENTS (agenda item 9) (General Assembly resolutions 44/135 and 44/144; A/44/539, A/44/668; E/CN.4/1990/39; CAT/C/L.5)

1. The CHAIRMAN recalled that, at its third session, the Committee had decided to defer consideration of the draft consolidated guidelines annexed to document A/44/539, and proposed that they should be considered as a separate part of the agenda item under review.

2. With regard to the two other parts of that agenda item, he drew the Committee's attention to General Assembly resolution 44/144, in which the General Assembly had welcomed the exchange of views that had taken place between the Committee against Torture and the Special Rapporteur of the Commission on Human Rights on questions relating to torture.

3. He recalled that the Committee had requested him to establish contact with Mr. Kooijmans in order to consider ways of continuing that co-operation and averting any risk of overlapping. The primary objective was to avoid the same States receiving several visits and several requests for information about the same facts. The basic idea was that the Special Rapporteur should remain competent for the general issues on which he had to report to the Commission on Human Rights as well as for any measures concerning States that were not parties to the Convention, while the Committee should deal with matters concerning States parties to the Convention, by virtue of the rule of lex specialis.

4. The discussions with Mr. Kooijmans had nevertheless revealed two major problems. Action by the Special Rapporteur was only of value if it took place within 24 hours, while the Committee was not in a position to act so rapidly in the case of States parties to the Convention. Furthermore, a number of States parties to the Convention, such as the Philippines and Turkey, had invited the Special Rapporteur to visit them, and it went without saying that he should take up those invitations, although the countries concerned fell within the purview of the Committee.

5. Thus, it could tentatively be concluded that co-operation between the Committee and the Special Rapporteur should continue in its current form i.e. through an exchange of information and documents and through personal contacts. That co-operation was in any case extremely satisfactory, and the main consideration was to ensure that the Committee and the Special Rapporteur did not both drop a particular matter to the detriment of effective action against torture.

6. Mr. BURNS said that he had never thought there was any form of conflict of jurisdiction between the Committee and the Special Rapporteur. Moreover, he was certain that the Committee lacked the necessary means to act rapidly, as Mr. Kooijmans could. Although article 20 of the Convention made provision for machinery to take action, the Committee was unable to act as efficiently as it desired. The Special Rapporteur was in a manner of speaking an arbitrator who could attempt to prevent a situation from worsening. Since the Committee was not able to assume that role, it was desirable, as the Chairman had suggested, for responsibilities to remain distributed as had hitherto been the case.

7. Mr. SØRENSEN said that the Committee did not have the same means to act as did the Special Rapporteur. It was even questionable whether it was empowered to do so. As the Special Rapporteur performed that function extremely well, there was no reason to change the existing arrangements.

8. Mr. GIL LAVEDRA stressed the complementarity of the functions of the Committee and of the Special Rapporteur and the need to ensure a fluid exchange of information. The best means of doing so was doubtless by continuing along the course mapped out by the Chairman.

9. Mr. KHITRIN shared the view that the two mandates were complementary. The Committee should endeavour to persuade more States to accede to the Convention. As far as on-the-spot visits were concerned, they could be carried out by the Special Rapporteur in so far as they were deemed necessary; there was no need for the Committee to make them.

10. Ms. CHANET remarked that it would be easy for the Committee to settle upon a modus vivendi as there was a text on which it could base itself, i.e. article 20 of the Convention. She failed to see how the fact that the Special Rapporteur had visited a country might prevent the Committee itself from taking action. If a country received special attention, that might perhaps simply be attributable to the seriousness of the situation regarding torture. Both the Committee and the Special Rapporteur could take action, although differently.

11. The CHAIRMAN said he gathered that the Committee wished to maintain the status quo with regard to the respective functions of the Committee and of the Special Rapporteur. Accordingly, care should be taken to ensure an effective exchange of reports and documents and to continue personal contacts in order to avoid overlapping that was always likely to antagonize States. In that form, such co-operation would have a synergic effect.

12. Mr. HOUSHMAND (Representative of the Secretary-General) said that the Committee was called upon to put forward its views on the various suggestions and recommendations designed to improve the operation of the bodies set up pursuant to United Nations human rights instruments. To that end, it had before it a report of the Secretary-General on the effective implementation of international instruments on human rights (A/44/539) and a document prepared by an expert on a number of essential questions relating to the operation of the treaty bodies, which contained conclusions and recommendations that might have a direct impact upon the Committee's future activities (A/44/668). Lastly, the Committee had before it the report of the task force which the Commission on Human Rights had entrusted with studying the possibility of computerizing the work of the treaty monitoring bodies (E/CN.4/1990/39).

13. Although the members of the Committee had probably not had time to examine that mass of documentation as attentively as might be desired, it was important for the Committee to express its views on all those matters at its current session and to set them out in the report it was to submit to the General Assembly at its forty-fifth session.

14. Mr. GIL LAVEDRA said that, in his view, there were two facets to the effective operation of the treaty bodies. On the one hand, they had to tackle the general problems which they all encountered as a result of the proliferation of international instruments, financial difficulties and the delays in the submission of reports by States parties, all of which necessitated a degree of structural change to the system as a whole and which were in fact the responsibility of the General Assembly. Secondly, it was necessary to take specific measures, under existing circumstances, to improve the operation of the treaty bodies, and hence of the Committee.

15. A separate examination should be made of each aspect of the question, the first of which moreoever, did not in fact appear to fall within the Committee's competence. Accordingly, he suggested that the Committee should consider the specific measures available to it to improve its operation, and leave aside the first facet of the problem.

16. Mr. MIKHAILOV and Mr. BURNS endorsed that proposal.

17. The CHAIRMAN suggested that the Committee should simply indicate in its report that it took note with interest of the information transmitted to it in the various reports concerning the overall problems encountered by the treaty bodies.

18. It was so decided.

19. The CHAIRMAN invited the members of the Committee to discuss the issue of improving its methods of work. He recalled that at a previous session he had already expressed his wish that reports should be given more careful scrutiny. He suggested that, in order to do so, it might be desirable to appoint a special rapporteur for each report and to draw more precise and better organized conclusions, after having heard the representatives of States. Furthermore, he wondered how the Committee could deal with delicate issues such as the execution of pregnant women and corporal punishment.

20. Mr. GIL LAVEDRA thought that as far as the consideration of reports was concerned, the Committee could direct its attention to three points, the first of which concerned the deadline for the submission and consideration of reports: the only reason why the Committee was behind in its work was that not all States had complied with their commitments on time, and it was necessary to seek ways of encouraging States to submit their reports in accordance with the timetable. The second point concerned the mechanism for considering reports: the current procedure involving questions in plenary meetings was not sufficiently rigorous and could prove too lengthy if States met the reporting deadline. The third issue concerned improvement of the presentation of reports, a matter with which the General Assembly was rightly concerned.

READEX FICHE

21. With regard to substantive issues, he thought that they unquestionably deserved a far-reaching debate. The execution of pregnant women after the birth of their child, in particular, required a discussion of the overall subject of the death penalty, which he considered to be the most cruel and inhuman of punishments.

22. The CHAIRMAN requested Mr. Houshmand, the representative of the Secretary-General, to inform the members of the Committee of the procedure adopted by the other human rights treaty bodies for the consideration of reports.

23. Mr. HOUSHMAND (Representative of the Secretary-General) said that the methods of work varied from one body to another and according to the stage of the procedure, i.e. depending on whether the report under consideration was an initial report or a periodic report. Some bodies had pre-sessional working groups. The Committee on the Elimination of Racial Discrimination had introduced the practice of appointing a rapporteur for each of the reports submitted to it. The rapporteur led the debate when the report for which he was responsible was discussed, while the other members of the Committee were still able to express their views, a method which had yielded satisfactory results. In some other bodies, working groups submitted a list of issues in advance to the delegation of the State whose report was to be considered. Finally, it was general practice for the bodies to make final conclusions or observations after having heard the State representatives, and in most cases part of the meeting was set aside for that purpose.

24. Mr. SØRENSEN expressed the hope that the Committee would be able to continue to consider reports of States without delay as was currently the case. He expressed his support for the appointment of two rapporteurs for each report, who would consult one another in advance in order to draw up a satisfactory questionnaire.

25. As far as conclusions were concerned, he thought that the essential role of the Committee was not to consider reports, whatever their quality might be, but to combat torture. Accordingly, it should submit specific observations to States with a view to ensuring the implementation of the Convention and show itself unbending towards States whose actions deserved criticism.

26. Ms. CHANET shared Mr. Sørensen's view that conclusions and general comments were a cornerstone of the Committee's work, and in that connection drew attention to the provisions of article 19 (3) and (4) of the Convention, pursuant to which the Committee could include in its annual report its general comments on the report of a State as well as the observations thereon received from the State.

27. With regard to sensitive matters such as the execution of pregnant women or corporal punishment, she pointed out that the Convention did not at first sight contain provisions similar to those of article 40 (4) of the International Covenant on Civil and Political Rights, which would allow the Committee to submit general comments and to set out its views on substantive problems in respect of torture. It was desirable to seek bases on which the Committee could present such general comments.

28. With regard to the procedure for considering reports, she supported the appointment of a working group or of two special rapporteurs, as she was concerned that the burden of work might be too heavy for a single rapporteur who might, moreover, find himself in a difficult position with regard to a particular State.

29. Lastly, she endorsed the consolidated guidelines for the preparation of reports, which were designed to avoid overlapping, although she nevertheless felt that the Committee should not be unduly concerned by duplication which was not of its own making. It should be borne in mind that States themselves had wished different legal instruments and distinct procedures, and that not all States were parties to all conventions.

30. Mr. KHITRIN commented that the questions put by members of the Committee during the consideration of reports were occasionally too numerous or went beyond the framework of the Convention. Some State representatives found it difficult to provide precise replies to all the questions and to avoid repeating themselves.

31. He suggested that a member of the Committee should be appointed in advance as a rapporteur for a specific report and made responsible for drawing up a list of issues that would be forwarded to the representatives of States through the Secretariat. The other members of the Committee would, however, still be able to ask oral questions during meetings at which the reports were considered, as was currently the case.

32. He also thought that it would be desirable for the Committee to consider, in one way or another, the problem of the death penalty and the practice of corporal punishment in some countries.

33. Mr. MIKHAILOV said that in order to improve the Committee's methods of work, it was first of all necessary better to prepare its consideration of the reports submitted by States. Not all States followed the guidelines for the preparation of reports and some of them did not really answer the questions put to them. He did not feel that it was necessary to set up a working group: it would be sufficient to entrust one of the members of the Committee with examining reports as soon as they were received by the Secretariat and with making observations on them, bearing in mind the existing guidelines and the experience gained.

34. Furthermore, some reports were considered extremely rapidly while others were subjected to scrupulous and critical consideration. The Committee should endeavour to ensure that all States received the same treatment.

35. With regard to conclusions, he shared Mr. Sørensen's view that in order to make its work more efficient, the Committee should always formulate them when it had finished considering a report in order to remind each State of the obligations incumbent upon it.

36. Mr. BURNS said that he would approve any change in the Committee's methods of work designed to make it more efficient. He did not object to the proposals made in that connection, in particular by Mr. Sørensen and Mr. Mikhailov, for a group of rapporteurs or one of the officers of the Committee to examine the reports in advance and prepare a list of issues to be raised when they were considered. He thought that those two methods were of

equal merit. Furthermore, he fully supported the idea advanced by Mr. Mikhailov that the Committee should immediately inform the State party of its conclusions so that the State could know at once whether or not its report was satisfactory.

37. Lastly, with regard to capital punishment, it was preferable to adopt the approach taken by Mr. Sørensen with regard to the situation of pregnant women sentenced to death, and to tackle it from the standpoint of how it was applied rather than what it represented. Capital punishment was not considered to constitute cruel or unusual treatment in the eyes of international law, as was evidenced by the fact that many States had not wished to accede to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. In order to avoid running counter to international law, the Committee should not deal with the death penalty as such.

38. Mr. DIPANDA MOUELLE endorsed the views of the majority of members who had already spoken on the issue of the consideration of reports. He nevertheless thought that it was important to know exactly when and how the proposed working group would be able to perform its task. The Secretariat would have to transmit the reports received from the States parties to the designated rapporteurs sufficiently in advance to enable the rapporteurs to study them and prepare a comprehensive list of issues to be raised with the States parties concerned at the session.

39. The death penalty was a sensitive issue which fell within the sovereignty of each State and on which the Committee could only make suggestions.

40. The CHAIRMAN informed Mr. Gil Lavedra, who had raised the question, that the Secretariat and the officers of the Committee constantly stressed to States the need to submit their reports by the appointed deadline. In particular, reminders were sent every six months to those States whose reports were overdue. In addition, at its previous session the Committee had decided to mention by name in its report to the General Assembly those States that had failed to submit their report despite two successive reminders.

41. Mr. HOUSHMAND (Representative of the Secretary-General) said that the Committee had so far not found a more effective means of persuading States to submit their reports. However, in contrast to the situation with other similar bodies, the problem of delays was not yet too serious in the case of the Committee against Torture. All of those bodies habitually followed the practice of sending reminders and a report to the General Assembly on the situation regarding pending reports, although that did not of course exclude private consultations between the officers of the Committee and representatives of the country concerned or personal contacts with heads of State or Government when they visited Geneva.

42. The CHAIRMAN acknowledged that the members of the Committee occasionally asked States questions, which, however interesting, were nevertheless, as Mr. Khitrin had observed, somewhat marginal to the subject and not always directly connected with the problem of torture. Accordingly, the Committee should exercise greater discipline in that respect. The main point to be resolved was the prior consideration of reports by one or two rapporteurs per State or by one of the officers of the Committee, and the preparation of a list of issues to be transmitted to the State party

43. Mr. MIKHAILOV specified that his proposal was to entrust an officer of the Committee with studying reports in advance to ensure that they conformed to the established guidelines and to inform the State concerned of the results of that review so that it could submit a fuller and more detailed report in accordance with the Committee's requirements. Such an approach would facilitate the work both of States parties and of the Committee.

44. The CHAIRMAN said that the Secretariat had already been performing that task since the Committee's second session. The reports of States parties were examined as soon as they were received, and if they did not follow the guidelines or were inadequate, the States were invited, within the framework of private consultations with the members of missions, to supply additional information. He wondered whether it was really necessary for one of the officers of the Committee to take part in that work.

45. Mr. SØRENSEN said he was sure that the Secretariat already performed that task satisfactorily and that if there was any doubt it would not fail to consult the members of the Committee. It thus seemed that the system proposed by Mr. Mikhailov already existed.

46. Mr. BURNS said that the Committee should not interfere in the work of the Secretariat, which the latter already performed satisfactorily. The key question was how best to obtain from States parties the information which interested the Committee. He suggested that the Committee should adopt the proposal to entrust two rapporteurs with carrying out a prior review of reports by States parties and drawing up a preliminary list of questions arising therefrom that would be asked when a report was considered in plenary.

47. Mr. MIKHAILOV expressed apprehension that such a proposal would entail an amendment to the Committee's rules of procedure rather than to its methods of work. He asked what the precise functions of the two rapporteurs would be.

48. Mr. BURNS pointed out that the Committee was free to organize itself as it wished in order to obtain the desired information from States parties. He failed to see how a State party would be harmed if two members of the Committee were entrusted with preparing a list of general questions to be asked, because in any case all the other members of the Committee would be able to ask additional questions during the meeting. If the term "rapporteur" was a problem, it would be sufficient to adopt another term.

49. Mr. DIPANDA MOUELLE said that the efforts made by the Secretariat to obtain further information from States parties in order to complete their reports and the improvement of the Committee's methods of work were two different matters. The appointment of rapporteurs was an internal organizational matter relating to the Committee's work. Those rapporteurs would be appointed informally and would thus not be endowed with any special status. They would in a manner of speaking constitute a working group entrusted with a particular task, a procedure that would be devoid of legal implications.

50. Mr. GIL LAVEDRA confirmed that the aim was not to establish a different body or to appoint a kind of special rapporteur, but merely to set up a working group to carry out a preliminary examination of reports, draw up a list of questions to be asked and thus prepare conclusions. In general,

conclusions were formulated too rapidly, immediately after a report had been considered. It would be preferable for them to be discussed briefly so that they could be presented in more concrete form.

51. Furthermore, he considered that it would be necessary to establish not one but several working groups depending on the number of reports to be considered, so as to ensure that tasks were distributed equitably among the members of the Committee.

52. The CHAIRMAN said that, if there was no objection, he would take it that the members of the Committee considered that the Secretariat should remain responsible for checking reports submitted by States parties as soon as they were received, without any need for the officers of the Committee to be involved at that stage.

53. It was so decided.

54. The CHAIRMAN said that the members of the Committee appeared to agree that it would be useful to entrust a small group of at least two persons with preparing, after a careful examination of the report by a State party and its annexes, questions to be raised with the State party's delegation when it introduced its report.

55. However, the method of work still had to be determined. There were two possibilities: the rapporteurs could either arrive in Geneva two days before the beginning of the session, provided that they had received reports from States parties in time to be able to examine them and agree on the questions to be asked, or decide at an earlier stage on the questions to be asked and submit them to States parties in order for them to prepare their replies several days before the report was introduced to the Committee.

56. Speaking as a member of the Committee, he said that he preferred the first solution as the second gave excessive powers to the members of the Committee appointed as rapporteurs.

57. Mr. SØRENSEN also endorsed the first solution as he thought that a method of work should develop gradually on the basis of experience, and adopting the second solution was tantamount to cutting corners.

58. Mr. DIPANDA MOUELLE endorsed Mr. Sørensen's view, although he emphasized that the second method might be applied to periodic reports.

59. The CHAIRMAN recalled that no periodic report was due for two years and requested the members of the Committee to confine their remarks to initial reports.

60. Mr. MIKHAILOV endorsed Mr. Burns' proposal that the two rapporteurs entrusted with examining reports should be invited to prepare conclusions in order to facilitate the Committee's work.

61. The CHAIRMAN suggested that the preparation of conclusions should be dealt with later.

62. Mr. KHITRIN, reverting to his earlier proposal, asked whether it would not be more rational for the two rapporteurs to study all the reports submitted for consideration at a particular session of the Committee.

63. Mr. DIPANDA MOUELLE and Mr. SØRENSEN pointed out that it was proper for the burden of work to be distributed equitably among the members of the Committee, who had other functions in addition to their obligations towards the Committee.

64. Mr. KHITRIN withdrew his proposal.

65. Mr. HOUSHMAND (Representative of the Secretary-General) said that the members of the Committee seemed to be of the view that their work would benefit if each report submitted by a State party and its annexes was carefully studied by two members of the Committee appointed as rapporteurs and entrusted with preparing the questions to be put to the State party. He pointed out that the Committee on the Elimination of Racial Discrimination appointed only one member to carry out that task.

66. In addition, the wish expressed by some members for the rapporteurs to meet for two days before the beginning of the session posed practical problems for the Secretariat, as it would have to call on the services of interpreters which it was difficult to secure for two whole days for the benefit of only two persons.

67. Mr. SØRENSEN suggested that the need to recruit interpreters for extra days could be avoided if the rapporteurs met on the first day of the session, assuming that half a day would be sufficient for them to agree on a certain number of questions. He nevertheless stressed the importance of such preliminary co-ordination.

68. The meeting was suspended at 12.10 p.m. and resumed at 12.20 p.m.

69. The CHAIRMAN informed the members of the Committee that during the suspension of the meeting, Mr. Khitrin and Mr. Mikhailov had expressed the view that the Committee could consider the possibility of appointing only one rapporteur for each report, who would also study the annexes, which were all too often neglected because they were not translated. Once the oral introduction of the report was completed, the rapporteur would be the first person to speak in order to put questions to the delegation of the State party before the other members of the Committee put their own questions.

70. Mr. BURNS endorsed the proposal of Mr. Khitrin and Mr. Mikhailov and said that it would be prudent also to appoint an alternate capable of replacing the rapporteur if he were unable to perform his functions.

71. Ms. CHANET said she was inclined to support the idea of appointing two rapporteurs, although, on account of the practical problems involved, she could agree that only one should be appointed, assisted by a designated alternate. She also felt that a prior exchange of opinions between the rapporteur and the Committee was desirable.

72. Mr. SØRENSEN supported the proposal that there should be only one rapporteur per report, for the same reasons as Ms. Chanet, although he

stressed the drawbacks of that solution. Two persons were better equipped than one and, for example, the skills of a lawyer could prove extremely valuable to a doctor.

73. Mr. GIL LAVEDRA considered that the prior exchange of opinions proposed by Ms. Chanet might entail a waste of time for the Committee. There was nothing wrong with experts putting questions directly to the representatives of the State concerned. It was when the time came to formulate conclusions and recommendations that an exchange of opinions was necessary.

74. The CHAIRMAN, speaking in a personal capacity and supported by Ms. CHANET, said that a prior exchange of opinions between the rapporteur and the members of the Committee might needlessly draw out the debate. He also noted that, as far as the number of rapporteurs was concerned, a consensus seemed to be emerging in favour of one rapporteur and an alternate. If he heard no objection, he would take it that the Committee wished to adopt that solution.

75. It was so decided.

76. The CHAIRMAN asked the Committee for its views on the method and criteria to be applied for selecting rapporteurs and their alternates.

77. Mr. BURNS proposed that the rapporteurs and their alternates should be appointed by the Chairman, in consultation with the Secretariat.

78. Mr. SØRENSEN emphasized the need to ensure that the rapporteur and his alternate had a common language.

79. Mr. GIL LAVEDRA stressed the need to share reports out equitably among the members of the Committee.

80. Mr. DIPANDA MOUELLE asked whether the Chairman could also be a rapporteur.

81. Mr. BURNS and Mrs. DIAZ PALACIOS said that, as a member of the Committee, the Chairman could certainly be entrusted with a particular dossier.

82. Mr. HOUSHMAND (Representative of the Secretary-General) said, in relation to Mr. Burns' proposal, that the practice in question was followed by the Committee on the Elimination of Racial Discrimination, whose Chairman appointed a rapporteur, in consultation with the Secretariat, for reports that would be received before the Committee's following session. The Chairman did not perform the function of rapporteur, and as far as reports already received by the Secretariat were concerned, they were shared out among the members of the Committee by the Chairman, in agreement with the Committee and in consultation with the Secretariat.

83. Mr. DIPANDA MOUELLE suggested that the Committee should prepare for the rapporteurs a framework for the presentation of reports.

84. The CHAIRMAN and Mr. HOUSHMAND (Representative of the Secretary-General), considered that such a framework already existed as the rapporteurs could follow the guidelines drawn up by the Committee for the preparation of reports.

85. Mr. GIL LAVEDRA said that the rapporteurs could also emphasize questions of particular interest to the members of the Committee.

86. The CHAIRMAN expressed the opinion that the Committee could base its practice on that followed by the Committee on the Elimination of Racial Discrimination. If there was no objection, he would take it that such was the view of the Committee.

87. It was so decided.

88. The CHAIRMAN suggested that the Committee should consider the question of conclusions and recommendations.

89. Mr. HOUSHMAND (Representative of the Secretary-General) pointed out that the usual practice in the Human Rights Committee and the Committee on Economic, Social and Cultural Rights was for committee members who wished to do so to make observations on points they considered important, after having heard the replies of the representatives of the State concerned; however, such observations were made in a personal capacity and were never either prepared or adopted in advance by the Committee. If necessary, the summary records of the relevant meetings could be transmitted to the State party.

90. Mr. SØRENSEN stressed the importance of the Committee's conclusions, which were perhaps its main weapon against torture. It was therefore unfortunate that they should be improvised. He furthermore suggested that in order to give them greater weight, the Committee's conclusions should not be transmitted to the delegations but to the States concerned.

91. Mr. MIKHAILOV said that it was desirable for the Chairman to draw the conclusions from the consideration of the report after the rapporteur had recalled the main observations made by the members of the Committee.

92. Mr. GIL LAVEDRA, supported by Mr. BURNS, said that the Chairman's burden of work should not be increased, and that the rapporteur should be responsible for preparing the conclusions.

93. Mrs. DIAZ PALACIOS said that, as the main purpose of the Committee was to combat torture, its conclusions should take the form of proposals rather than judgements.

94. Mr. KHITRIN considered that it was essential for the Committee to have initial draft conclusions which would subsequently be expanded by the Chairman, bearing in mind the observations made by the Committee. He also felt that the Committee's conclusions should be presented by the Chairman.

95. Mr. MIKHAILOV said he was prepared to accept that opinion if it received general support, although on the understanding that the rapporteur would sketch out the main lines of the conclusions and the Chairman would prepare the Committee's definitive conclusions.

96. The CHAIRMAN suggested that the Committee should continue its discussion of the issue at the following meeting.

The meeting rose at 1.05 p.m.

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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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COMMITTEE AGAINST TORTURE

Fourth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 49th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 26 April 1990, at 3 p.m.

Chairman: Mr. VOYAME

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Action by the General Assembly at its forty-fourth session:

(b) Effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights (continued)

(c) Consideration of consolidated guidelines for the initial part of the reports of States parties under international human rights instruments

Organizational and other matters (continued)

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*/ The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.49/Add.1.

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Any corrections to the records of the public meetings of the Commission at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

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The meeting was called to order at 3.05 p.m.

ACTION BY THE GENERAL ASSEMBLY AT ITS FORTY-FOURTH SESSION (agenda item 9):

(b) EFFECTIVE IMPLEMENTATION OF INTERNATIONAL INSTRUMENTS ON HUMAN RIGHTS, INCLUDING REPORTING OBLIGATIONS UNDER INTERNATIONAL INSTRUMENTS ON HUMAN RIGHTS (continued)

1. The CHAIRMAN reminded members that at its previous meeting the Committee had decided that a case rapporteur and deputy rapporteur for each report by State parties would be designated on the proposal of the Chairman during sessions of the Committee, and by the Chairman in collaboration with the secretariat between sessions. The Chairman would also be called upon to act as a case rapporteur. Following presentation of the State party's report, the case rapporteur would be the first to comment upon it.

2. It had also been decided that the case rapporteur would prepare draft recommendations and conclusions. However, the Committee still had to decide whether the Committee would discuss that text and adopt it or whether, as at present, the conclusions and recommendations would be discussed by the Committee and incorporated in the report in systematic fashion by the secretariat. If the former solution were adopted, members must decide on the form of the discussion and whether the conclusions should be promptly transmitted to States parties in writing.

3. Mr. SORENSEN said he believed that the best method, even if it were a little more troublesome, would be for the case rapporteur to prepare a text, for the Committee to discuss it in plenary meeting and for any conclusions to be sent to the State party.

4. Ms. CHANET pointed out that if the Committee drew up comments in advance of the discussion, States parties might consider that that prejudged their reports and that the discussion would not be worthwhile. It was important to have a general but flexible pattern of discussion, and the case rapporteur should start drafting a text and adjust it in the light of the answers received from the State party representative and the other questions asked. The Committee must not adopt procedures that made it look like a court of law. She suggested that the Committee should send its comments to the State party for reply.

5. Mr. BURNS endorsed those views. The members of the Committee must not give the impression that they came to its sessions with closed minds, but he did not interpret Mr. Sorensen's suggestion as conducive to such an impression.

6. The CHAIRMAN pointed out that the case rapporteur would not have to submit his draft conclusions and recommendations before the presentation and discussion of the State party's report.

7. Mr. GIL LAVEDRA suggested that the case rapporteur's conclusions should be given orally in plenary meeting, and then discussed quickly to see whether any changes were needed.

8. The CHAIRMAN felt there was a danger that, since the discussion would be in three stages instead of two, the Committee might no longer be able to consider two reports a day.

9. Mr. SORENSEN pointed out that the Committee would not need to meet the delegation of the State party a second time.

10. Mr. GIL LAVEDRA observed that the whole point of having case rapporteurs was to enable the Committee to consider more than two reports a day. The position of the State party could be expressed in not more than 15 minutes, the case rapporteur and, if necessary, other members of the Committee could ask questions, avoiding a long series of repetitive questions as at present, and the conclusions could be dealt with quickly on the following day, but not in the presence of the delegations concerned. The Committee might try out the system with one of the reports yet to be considered at the present session.

11. Mr. SORENSEN said he still did not think it necessary to keep the delegation for a further day. The Committee could hardly give the State party its conclusions without having discussed them.

12. Mr. BURNS endorsed that view. The reports of two States parties should be put on the agenda each day on the assumption that the Committee would reduce the time devoted to each and that at the end of the day, after the representatives of the State party had left, the Committee would try to formulate its conclusions. It would soon be apparent whether or not the system would work.

13. The CHAIRMAN said that there seemed to be agreement to proceed on those lines. He called for views on whether the discussion of the conclusions should be at a closed meeting. If the meeting was public and the State party was not represented, it might learn of the discussions in the press, which would be undesirable.

14. Mr. BURNS pointed out that rule 31 of the rules of procedure provided that meetings of the Committee should be held in public unless the Committee decided otherwise. In his view, the discussion should be held in public and the State party should be represented.

15. Mr. MIKHAILOV considered that the meetings should be public unless a specific case required them to be closed.

16. After a brief discussion, the CHAIRMAN suggested that the State party should be made aware that the discussion might continue the following day and that it would be up to that State to decide whether to send an observer or not, it being understood that at that meeting only members of the Committee would take the floor and the State party would not comment.

17. It was so agreed.

(c) CONSIDERATION OF CONSOLIDATED GUIDELINES FOR THE INITIAL PART OF THE REPORTS OF STATES PARTIES UNDER INTERNATIONAL HUMAN RIGHTS INSTRUMENTS (CAT/C/L.5)

18. The CHAIRMAN reminded members that at its third session the Committee had had before it the draft consolidated guidelines (CAT/C/L.5, annex), which had been drawn up with the idea that its report should contain a general section containing information on the submitting State. That section would be the same for all human rights treaty bodies, thus obviating the need for States to do the same work every time. The Committee was now required to discuss and take a decision on the text of the revised draft guidelines.

19. Mr. HOUSHMAND (Representative of the Secretary-General) said that the draft consolidated guidelines had been discussed in some detail at the third session of the Committee and a number of suggestions had been made. The secretariat had been requested to submit a revised text of the guidelines, which was now available in document CAT/C/L.5 incorporating the proposals made by members of the Committee and drawing attention to the questions in the text that were already reflected in the Committee's general guidelines (CAT/C/4/Rev.1). Those questions were underlined in the text.

20. It was suggested that the Committee should examine the text together with its own general guidelines in order to decide whether the proposed text reflected its wishes. If the Committee approved the text, which had already been examined by other human rights treaty bodies, it would be submitted to the next meeting of Chairpersons of human rights treaty bodies, which was to be held in Geneva late in September, and subsequently to the forty-fifth session of the General Assembly.

21. The CHAIRMAN called for comments on the draft guidelines.

22. Mr. BURNS said that the draft consolidated guidelines appeared to ask for a good deal of information that might be of relevance to other committees but was of no concern to the Committee against Torture. That was particularly true of the section "Land and people".

23. Mr. HOUSHMAND (Representative of the Secretary-General), explaining the background to the proposal, said that the object of the exericise had been to relieve the reporting State of some of the burden of supplying information periodically to a number of different treaty bodies. Once its computerization project was fully in place, the secretariat would be able to extract from the consolidated information such information as was of relevance to individual committees. In the meantime, each committee was free to focus selectively on information relevant to its own purposes.

24. Mr. BURNS said that, in the light of that explanation, he was entirely satisfied with the draft consolidated guidelines.

25. Mr. HOUSHMAND (Representative of the Secretary-General), responding to a request for clarification by Mr. Sorensen, confirmed that part II of the Committee's general guidelines would continue to be sent to reporting States.

26. Mr. GIL LAVEDRA pointed out that, with the exception of heading (f) of part I of the Committee's general guidelines, which could perhaps be transferred to part II, all the headings contained in part I were covered in the four sections of the draft consolidated guidelines.

27. Mr. HOUSHMAND (Representative of the Secretary-General) said that, if the draft consolidated guidelines were approved by the Committee, as they had already been by other committees, and were subsequently endorsed by the General Assembly, the Committee's general guidelines (CAT/C/4/Rev.1) would have to be revised slightly, removing those elements already covered in the consolidated guidelines. The remaining items, including the whole of part II of the general guidelines, would then be for the sole use of the Committee against Torture. Reporting States would receive both sets of guidelines, but would submit the information requested in the consolidated guidelines once only. Reports submitted to the Committee against Torture would concentrate on those specific issues referred to in the revised version of the general guidelines. In that regard, he drew Committee members' attention to paragraph 3 of annex I to document CAT/C/L.5, which detailed the procedure that would ensue on approval of the draft consolidated guidelines by the General Assembly.

28. Mr. GIL LAVEDRA considered that, in the light of that explanation, the draft consolidated guidelines could be approved forthwith.

29. Mr. MIKHAILOV drew attention to a discrepancy between the French and Russian terms used to render the English term "rehabilitation" in paragraph 1 of annex I to document CAT/C/L.5.

30. The CHAIRMAN thanked Mr. Mikhailov for his observation and said that the secretariat would ensure that the texts were harmonized. If there was no objection, he would take it that the Committee approved the draft consolidated guidelines contained in document CAT/C/L.5.

31. It was so decided.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 5) (continued)

Co-ordination of activities with the United Nations Voluntary Fund for Victims of Torture

32. The CHAIRMAN reminded members that the Chairman of the Voluntary Fund had already addressed the Committee on its work, and that he himself had also had occasion to address the Board of Trustees of the Voluntary Fund about the work of the Committee. If there was no objection, he would take it that the Committee wished him to continue with the exchange of information on those lines in the future.

33. It was so decided.

Co-ordination of activities with the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

34. The CHAIRMAN referred to the recent contacts between the Committee against Torture and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. At its second session, held in

Geneva the previous January, he had spoken to that Committee about the work of the Committee against Torture, and the Special Rapporteur on Torture had also spoken of his work. Mr. Sorensen was first Vice-Chairman of the European Committee, and so co-ordination between the two bodies was assured. However, since the ad hoc inquiries conducted by the European Committee were of a confidential nature, as were the Committee against Torture's own inquiries under the article 20 procedure, there was a danger that the two committees might one day find themselves in the same country on the same day, investigating the same allegations. The problem of avoiding such an overlap thus arose.

35. Mr. SORENSEN suggested that an official link with the European Committee should be forged by inviting its Chairman to attend one of the Committee's meetings. The two committees in fact worked in very different fields and the likelihood of their activities clashing was minimal.

The public meeting rose at 4.05 p.m.

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Fourth session

SUMMARY RECORD OF THE 50th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 27 April 1990, at 10 a.m.

Chairman: Mr. VOYAME

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Initial report of China

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The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7) (continued)

Initial report of China (CAT/C/7/Add.5)

1. At the invitation of the Chairman, Mr. Fan Guoxiang, Mr. Shen Jinchu, Mr. Zhang Kening, Mr. Cui Jingrui and Mr. Xu Hong (China) took places at the Committee table.

2. Mr. FAN Guoxiang (China), introducing his country's initial report (CAT/C/7/Add.5), recalled that the People's Republic of China had become a party to the Convention in November 1988. His Government had made every effort at the legislative, judicial and administrative levels to combat torture and safeguard the rights of the person and the citizen.

3. All the relevant provisions of the Convention were reflected in Chinese legal instruments, including the Constitution, the Criminal Law, the Criminal Procedure Law, the Administrative Procedure Law and the Regulations on Arrest and Detention. In addition, under the Chinese legal system, an international convention came into force as soon as it was ratified. There was therefore no special legislative procedure for incorporating an international convention into domestic law.

4. Acts of torture, as defined by the Convention, were strictly prohibited by Chinese law, which stipulated that the rights of the person and the citizen were inviolable. It was strictly forbidden for a State official to extort confessions by torture and to obtain evidence by threats or other unlawful means. Public security officials were forbidden to ill-treat or insult a suspect in carrying out their work. The administrative staff of prisons were also forbidden to extort confessions from prisoners by torture or ill-treatment. The law punished anyone who violated those regulations.

5. Chinese laws also protected the legitimate rights and interests of prisoners. Beating, scolding and corporal punishment were prohibited, and medical care and labour protection were guaranteed. He pointed out that, in Chinese law, penalties for crime were aimed not just at punishing criminals but also at reforming them and helping them, by education through labour, to break with their past and once again become citizens useful to society. Those measures were imbued with a humanitarian spirit.

6. In order to prevent any authority or official from abusing power and inflicting torture, legislative measures had been adopted setting forth the principle of the independence of the judiciary and establishing mutual checks and supervision between the courts, the procuratorates and the public security organs. In particular, legal supervision of the execution of court decisions in criminal cases had been strengthened. Cases of corporal punishment or maltreatment of prisoners undergoing rehabilitation through labour had been promptly investigated. To that end, the State had established disciplinary affairs departments in the procuratorates, exclusively devoted to dealing with infringements of the rights of citizens by State officials.

7. Furthermore, Chinese law ensured that citizens could protect their lawful rights and interests through judicial channels and receive compensation when judicial or administrative officials infringed upon those rights and interests.

8. In order to prevent torture, the State was very strict in selecting and training judicial personnel, medical workers and public servants, and required them to have high standards of professional ethics. It wished the mass media to play a full supervisory role by exposing unlawful practices and for citizens to be aware of the dual necessity of observing the law and seeing to it that State officials carried out their duties in an appropriate manner.

9. His Government had always paid great attention to international co-operation in combating torture and, as part of its obligations under the Convention, exercised its criminal jurisdiction over crimes of torture whether or not they were committed on Chinese territory. It was also willing to develop co-operation with other countries in extradition and judicial assistance.

10. Since it had submitted its report in December 1989, his Government had continued to combat torture in accordance with the spirit of the Convention. For instance, the State Council had issued regulations on houses of detention, which had come into force on 17 March 1990 and stipulated inter alia that houses of detention must continue to combine strict vigilance with education, to ensure that the legitimate rights and interests of prisoners were respected and strictly prohibit beating, scolding, corporal punishment and ill-treatment.

11. The houses of detention were placed under the supervision of the procuratorates. Inmates had to be suitably fed, and theft and misappropriation were prohibited. In addition, consideration was given to the customs of inmates belonging to minorities or of foreign nationality. Each house of detention had to ensure that its staff carried out the law. Appeals and complaints by inmates had to be submitted without delay to the competent bodies.

12. Like any other criminal offence, however, torture was hard to eliminate completely. Aware of that, his Government had adopted the necessary measures to combat the practice of torture, but still had much work to do in respect of justice, administration, propaganda and education.

13. Mr. BURNS, having thanked the representative of China for his introduction, said he regretted that the report gave a very general picture of Chinese legislation and was insufficiently detailed, whereas what the Committee required above all was factual information.

14. Having recalled that China had entered reservations to article 2 and had not made the declarations provided for in articles 21 and 22, he said that he was well aware of the complex problems facing the Government of China. He had a number of questions to ask. It was unclear whether Chinese legislation gave a specific definition of the crime of torture or whether it was included in the definition of other crimes. He would like to know how many prisons and prisoners there were in China; whether there were any military prisons and, if so, how they were administered and how many people were held in them; whether incommunicado detention existed in China and, if so, for what duration and with what limitations, and what legal safeguards there were for the detainees.

15. The report stated that certain kinds of corporal punishment were prohibited. He wondered whether that meant that other forms of corporal punishment were allowed. If so, he would like to know what they were and whether such forms of punishment had been imposed recently. Since capital punishment was still in force in China, the question arose what appeals were possible once the sentence had been handed down, how many times the death penalty had been inflicted during the last 12 months and what method of execution was employed.

16. Paragraph 19 of the report seemed to make a distinction between reform through labour and rehabilitation through labour, and it would be interesting if the Chinese delegation could explain the difference between those concepts. He asked how many State officials had been prosecuted for torture since June 1989 and what the results had been. Under article 41 of the Chinese Constitution (para. 27 of the report), citizens who had suffered losses as a result of infringement of their civic rights by any State organ or official had the right to compensation. He would like to know how many citizens had been so compensated in 1989 and in what form.

17. For some 10 years, China had been making tremendous efforts to ensure that the law was enforced, and it would be interesting to know how judges and prosecutors were appointed and what the constitutional safeguards of their independence were, particularly in the case of judges.

18. Documents in his possession, including the report prepared by the Special Rapporteur on questions relevant to torture of the Commission on Human Rights (E/CN.4/1990/17), contained numerous allegations of torture in China, particularly in Tibet. It would be useful to know the political, constitutional and administrative status of Tibet within the People's Republic of China and what was the nature of the local administration in regions forbidden to foreign observers and non-governmental organizations. He was particularly interested in learning what steps had been taken to ensure that the rights of the population of Tibet were not infringed by officials.

19. The report stated that the police was forbidden to inflict torture to extort confessions. Article 15 of the Convention went further: it provided that any statement made as a result of torture could not be invoked as evidence in any proceedings. He wondered whether that was the case in Chinese legislation.

20. Mr. SØRENSEN said that he had had some difficulty in reading the report because it did not contain a section dealing with the application of the Convention article by article.

21. He was concerned about the scope of the restriction contained in article 43 of the Criminal Procedure Law (para. 47 of the report) which stipulated that the family of a person arrested should be notified of the reasons for detention and the place of custody "except in circumstances where such notification would hinder the investigation or there is no way of notifying them". To understand that provision, information was needed regarding the circumstances in which the restriction had been applied, and whether it was often used. Information from non-governmental organizations revealed that it was current practice to hold incommunicado persons who did not know why they had been arrested. In that connection, it would be useful to know what part the doctors played, whether a prisoner could demand a medical examination and, if so, whether the doctor was chosen by the person concerned or by the authorities.

22. To gain a clearer idea how the law was applied in the People's Republic of China, the Committee needed details of the nature of the 20,000 cases brought to court out of the 30,000 offences of infringing upon the rights of the person and democratic rights, which were mentioned in paragraph 23 of the report.

23. The report was silent concerning the implementation of article 10 of the Convention, which obliged the States parties to ensure that education and information regarding the prohibition against torture were fully included in the training of law enforcement personnel, civil or military. It would be useful to know how those provisions were applied in practice.

24. Under the Convention, torture victims should receive redress that was more than just financial compensation, and he asked whether the Chinese authorities provided the moral support and medical treatment needed by the victims of torture.

25. It would be useful to know the average length of the terms of imprisonment of political prisoners, the reasons for their conviction and, in general, how they were treated.

26. Lastly, having noted from paragraph 53 of the report that the Government recognized the persistence of torture in certain localities, he said he hoped that the Chinese delegation would explain the methods used to combat those practices with a view to their complete elimination.

27. Mrs. CHANET said she regretted that the initial report of China, which was quite comprehensive with regard to the constitutional framework, should be so succinct on the subject of the practical application of the Convention. In particular, she would like to know the exact position of the Convention in domestic Chinese law. If she had understood correctly, the Convention was directly applicable, but she found it hard to believe that all the provisions of the Convention had already been provided for in Chinese legislation at the moment it had entered into force. That would be quite unusual, and it would therefore be interesting to know which domestic legislative provisions corresponded to each article.

28. She also wondered whether the right of citizens to make charges or complaints of torture (para. 20 of the report) was reserved to Chinese citizens or whether it applied to foreigners as well.

29. Paragraph 22, on the People's Procuratorates of the Republic, required some amplification, particularly with regard to the department in charge of disciplinary affairs, whose powers in disciplinary matters and cases of torture were not very clear, particularly in relation to the courts, which seemed to have jurisdiction in that area themselves. Moreover, it would be useful to have information about the follow-up to the 20,000 cases brought to court, mentioned in paragraph 23.

30. Article 41 of the Constitution (para. 21 of the report) also needed some clarification, since it stated that Chinese citizens had the right to make exposures of acts of torture but that "fabrication or distortion of the facts ... is prohibited". It was always hard to produce evidence of torture, and she would be grateful if the Chinese delegation could provide information on the means available to citizens to provide such evidence. She wished to

know in particular how the medical profession recorded any signs of ill-treatment and whether there were also independent investigators. According to paragraphs 30 and 31 of the report, investigation into torture was left to the administrative organ concerned and transferred to the next higher level, which did not exactly encourage impartiality.

31. The information given in paragraphs 27 and 33 of the report concerning the compensation granted to torture victims should be supplemented by information on specific cases in which such compensation was granted, with the number of cases and the average amount of compensation paid.

32. It was not clear from the report whether Chinese legislation defined torture, and she wondered if the criminal offences mentioned corresponded exactly to the definition of torture in the Convention. Under the Criminal Law, the punishment provided for such offences was 3, 7 or 10 years' imprisonment, which did not seem to be very heavy. However, it was impossible to form a precise opinion because elements of comparison were lacking, and an indication of the scale of penalties in China would thus be particularly useful. Since the death penalty was still in force in China, it was essential to know also the offences for which it could be applied.

33. In the negotiations on the preparation of the Convention, she believed that the Chinese delegation had not been in favour of establishing universal jurisdiction. She would like to know, therefore, whether there was a general jurisdictional rule for the hearing of cases of violations committed abroad by foreigners, in view of the fact that the Convention was directly applicable.

34. Since the Chinese Government admitted, in paragraph 53 of the report, that torture had not yet been wholly eliminated, it should provide replies concerning the cases brought to its attention by the Special Rapporteur on questions relevant to torture (E/CN.4/1990/17) and not just confine itself to stating that those cases were pure fabrications.

35. The practice of re-educating counter-revolutionaries - whom she considered to be political prisoners - through forced labour appeared to contravene article 16 of the Convention, and a description of the conditions in which that labour was carried out might enable the Committee to see whether or not it constituted cruel, inhuman or degrading treatment.

36. Mr. GIL LAVEDRA said that the report suffered from various omissions, particularly regarding the legal structure in China, the characteristics and jurisdiction of the different courts including the People's Courts, any special or military courts, and administrative courts.

37. He welcomed the adoption of Regulations on Arrest and pre-trial Detention, but the report showed that the only real provision was that the families had to be notified. No details were given on the possibility of incommunicado detention, the length of pre-trial detention or the obligation to give detainees medical examinations. Moreover, the report did not state whether political prisoners were judged by regular or special courts.

38. He associated himself with the other members of the Committee who had asked about the place of the Convention in domestic Chinese law.

39. Because of the lack of information in the report on each of the provisions of the Convention, a great many questions needed to be asked, on the following points: the severity with which the crime of torture was punished as compared with other offences; the possibility or prohibition of justifying or excusing an offence committed by citing orders from a superior; the implementation of the general provisions in exceptional circumstances, for instance in internal disturbances; the machinery available for monitoring the conditions of detention of prisoners in order to avoid cases of torture; the possibility of setting aside evidence obtained under torture and so forth.

40. He also wished to know whether cases of extrajudicial executions and clandestine or illegal detention had been brought to the attention of the Chinese authorities and, if so, whether those responsible had been identified and prosecuted. The question also arose whether there had been any cases of secret trials and persons held in incommunicado detention for excessive periods.

41. It would also be useful to know the specific functions of the members of the armed forces with regard to detention, and the treatment of political dissidents as compared with other prisoners.

42. Since the aim of States in ratifying the Convention against Torture was clearly to eliminate the practice, the Committee endeavoured to find out whether the necessary efforts were being made to achieve that end. In the case of China, the Committee had received an impressive amount of information from non-governmental organizations and from the Special Rapporteur appointed on questions relevant to torture, which revealed a grave pattern of gross violations of human rights. He therefore hoped that, after having replied to the questions arising from the report as such, the Chinese delegation would comment on the allegations that had been brought to its attention, particularly on the cases mentioned by the Special Rapporteur to which there had been no response.

43. Mr. DIPANDA MOUELLE said he wondered whether the Committee could not ask for a supplementary report that would fill in all the gaps in the report under consideration.

44. Further details were needed, inter alia, concerning the reform mentioned in paragraph 17 of the report, to find out whether it had actually improved the checks and balances in the State judicial system and what had really been changed.

45. He welcomed the fact that the citizen had the right to make charges against any State judicial functionary. However, it would be useful to know what authority received such complaints and what the relations between the procuratorate and the public security organs were.

46. Paragraph 46 of the report stated that a public security organ might detain any person in the process of committing a crime or "proved by conclusive evidence to be guilty". That statement required clarification, since it was usually the task of the courts to establish guilt.

47. Mr. KHITRIN said that it was clear from the report of China that its Government had endeavoured to collaborate with international organizations and in particular with the Committee. For several years China had been

endeavouring to progress along the path to democratization, but obviously that process took a long time. Nevertheless certain points augured well for the future, including the fact that 520 million citizens had received some legal education (para. 36 of the report). In that connection, he wondered what steps had been taken to make the Convention known to the population in general.

48. It appeared from the report that the detention camps for counter-revolutionaries had been abolished, but the information in paragraph 16 concerning the labour reform institutions implied that there was still a difference between counter-revolutionary offenders and other categories of offender. The question thus arose whether there were still specific labour reform institutions for the former.

49. As another member of the Committee had pointed out, the relations between the public security organs, the Ministry of Justice and the procuratorates were not very clear. It was also important to have further details about the respective jurisdiction of the administrative courts and the supervisory authority, particularly with a view to preventing torture. In that connection, it would be useful to know how many complaints of torture had been lodged, the number of complaints declared admissible and what punishments, if any, had been applied. Likewise, he wished to know how many of the 20,000 cases brought to court (para. 23 of the report) had resulted in convictions and penalties.

50. More detailed information on article 3 of the Criminal Law, mentioned in paragraph 44 of the report, was necessary if the Committee was to understand, in particular, the restriction that the law was applicable "unless the case is covered by special legal provisions".

51. Mr. MIKHAILOV said he noted with satisfaction that the People's Republic of China, the country with the world's largest population, had ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 30 November 1988, thus strengthening the authority of the Convention; that China had submitted its initial report to the Committee within a very short period, that, on 4 April 1989, the National People's Congress had adopted the Administrative Procedure Law, a remarkable document; and that the Chinese Government had had the courage to recognize in its report that torture had not yet been completely eliminated. All those facts did honour to China.

52. He regretted, however, that the report, which gave a good idea of the general situation in China, did not give enough information about the judicial aspects of the application of the Convention and did not follow the Committee's guidelines for the submission of reports.

53. He asked, in connection with paragraph 11 of the report, whether the powers and jurisdiction of the public security organs were governed by laws other than the Criminal Procedure Law and what the relations were between the public security organs, the procuratorates and the courts.

54. In connection with paragraph 14 of the report he welcomed the provision in article 5 of the Regulations on Arrest and Detention that the family of an arrested person should normally be informed within 24 hours of the reason for the arrest and the place of custody, but asked for clarification of the provision that the body responsible for the arrest did not have to give such

notification when it would hinder the investigation or when there was no way to notify the family. He wondered whether there were any relevant procedural safeguards to prevent that provision from being abused.

55. In connection with paragraph 23, he noted with interest that a very large number of offences of infringing upon the rights of the person and democratic rights had been brought to court and would like to know what the offences were in the 20,000 cases mentioned and what had been the results of the court hearings.

56. He had noted with satisfaction from paragraph 27 that citizens who had suffered losses as a result of the infringement of their civic rights by any State organ or official had the right to compensation, and asked how that remarkable provision was implemented and whether there was a special law for the purpose.

57. He noted that article 68 of the Administrative Procedure Law (quoted in para. 33 of the report) provided that an administrative organ, having compensated a citizen whose lawful rights and interests had been infringed, could instruct those members of its personnel who had committed intentional or gross mistakes to bear part or all of the damages. In such cases, he would like to know what civil, criminal or administrative safeguards there were for the application of that provision.

58. Mrs. DIAZ PALACIOS, while recognizing the demographic, political and cultural difficulties of the People's Republic of China, endorsed Mr. Dipanda Mouelle's proposal that the Committee should ask it to submit a supplementary report because of the gaps in the report under consideration.

59. Like Mr. Khitrin, she was interested in the educational work of the authorities in providing legal education for 750 million citizens (para. 36 of the report). It would be useful to know how that tremendous educational task had been carried out in such a large society with limited electronic means of communication.

60. She also wished to know whether remedies such as pardon and amnesty were provided for and used. Those measures contributed to the avoidance of acts of torture (particularly in prisons) and to ensuring respect for human rights.

61. The CHAIRMAN, speaking as a member of the Committee, noted, like other members, that the report submitted by the People's Republic of China was interesting but incomplete in that it did not cover the way in which the legal regulations were applied. While recognizing that there were difficulties of implementation, he nevertheless wished to know more about ways and means of preventing and punishing torture and about the prosecution of officials guilty of reprehensible action of that kind. The endeavours must be consonant with the size of the country.

62. He had also some questions of a general nature to put, some of which had already been touched upon by other members of the Committee. He would like to have details about the competence and powers of the police and the judiciary (what the respective powers of the examining magistrate, the procuratorates and the courts were and what appeals were possible), on the prison régime (who directed the prison system and carried out the necessary supervision), and on

the ways in which the Convention was applied in domestic law. In that connection, he considered that, although the Convention was directly applicable in China, it should be supplemented by domestic legislation, particularly since it did not explicitly provide for penalties.

63. He also wished to have details about the implementation of certain articles of the Convention. In the first place, he would like to know what measures had been taken under article 2 of the Convention to prevent acts of torture. It seemed, for instance, that in China there could be incommunicado detention for several days or even several weeks and that might encourage torture. Moreover, although when a person was arrested it was a good thing for his family to be informed of the reasons for his arrest and the place of his detention, that was not enough: the person concerned should be able to contact his family and a lawyer in order, inter alia, to prevent cases of torture. In that connection, he wished to know the cases in which the family was not notified.

64. He wondered if everyone who was arrested was brought rapidly before a judge, if prisoners had the right to complain, and if there was effective and independent medical supervision of the prisoners. It was necessary to take all appropriate steps to prevent acts of torture being committed at the administrative, judicial or prison stages.

65. In connection with article 4 of the Convention, he would like to have some information about cases in which persons found guilty of torture had been sentenced, complete with statistics and examples of sentences. The provisions punishing torture seemed to be relevant only to bodily harm. It was surely also necessary to punish moral torture.

66. He also wished to have details concerning the implementation of articles 6 to 9 of the Convention, dealing with universal jurisdiction and extradition.

67. With regard to the implementation of article 10 of the Convention, which covered education and information regarding the prohibition of torture, the information work carried out by the Chinese authorities was impressive but those efforts should be strengthened since there were still cases of torture in the country.

68. In connection with the implementation of article 14 of the Convention, he asked what was the procedure for compensating victims, whether it was an automatic one or could be carried out only after judicial action, in what court the procedure took place, what form the compensation took, whether the responsibility of the State was involved and the number of cases in which compensation had been awarded.

69. In connection with the implementation of article 15 of the Convention, he asked whether there was a rule that a statement obtained under torture could not be used as evidence and if so, whether there had been cases in which that provision had been applied in practice.

70. The members of the Committee had received information concerning allegations of torture in China, particularly in Tibet, from non-governmental organizations and also from the Special Rapporteur of the Commission on Human Rights. Those allegations of torture were numerous and mutually corroborative: torture did not seem to be an isolated phenomenon.

71. Noting the desire of the Chinese Government to put an end to torture, he suggested that the Centre for Human Rights should help the Chinese authorities with training (in the form of seminars, for instance) and that the Committee against Torture should assist the Chinese Government to combat torture in whatever way that Government deemed most appropriate.

The meeting rose at 11.55 a.m.

UNITED
NATIONS

CAT

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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COMMITTEE AGAINST TORTURE

Fourth session

SUMMARY RECORD OF THE 51st MEETING

Held at the Palais des Nations, Geneva,
on Friday, 27 April 1990, at 3 p.m.

Chairman: Mr. VOYAME

CONTENTS

Consideration of reports submitted by States parties under article 19 of the Convention

Initial report of China (continued)

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Any corrections to the records of the meetings of this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

The meeting was called to order at 3.40 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7)

Initial report of China (CAT/C/7/Add.5) (continued)

1. At the invitation of the Chairman, the members of the delegation of China took seats at the Committee table.

2. Mr. SHEN Jinchu (China), replying to questions concerning consistency between the Convention against Torture and national legislation, said that offences under the Convention were also regarded as offences under Chinese domestic law. When China acceded to any convention, it became binding as soon as it entered into force. China then fulfilled all its obligations, and it was not necessary to draft special laws to ensure conformity. If an international instrument was inconsistent with domestic law, the latter was brought into line with the former. Where subtle differences remained, international instruments took precedence over domestic law.

3. The provisions governing extradition and judicial assistance in criminal matters served as a basis for co-operation with other countries. In addition, Chinese domestic law defined torture and laid down penalties for such practices. Under the Chinese Constitution, the freedom of citizens was inviolable. Such restrictions on the freedom of citizens as unlawful arrest and unlawful bodily search were prohibited. The dignity of the individual was also inviolable. Persons who had been the victims of human rights violations at the hands of law enforcement officers could demand compensation. The extraction of confessions by torture, as well as illegal detention, illegal surveillance and corporal punishment, were prohibited.

4. Procedures guaranteeing the right of victims of torture to appeal for compensation had been improved. In the few cases in which law enforcement officers had been found guilty of extracting confessions through torture or otherwise infringing the rights of detainees, they had been punished. The rights of offenders serving prison sentences were also protected. Inspection bodies had been set up to prevent mistreatment in prisons, and in 1989, 382 cases of violations of the rights of prisoners had come to light. Foreigners enjoyed the same right of appeal as Chinese citizens.

5. His Government was firmly opposed to torture and other cruel, inhuman or degrading treatment or punishment, and attached great importance to investigating all allegations of torture. Any person found guilty of having used torture or other inhuman or degrading treatment to extract a confession was punished to the full extent of the law. In the view of his Government, war, the threat of war, domestic instability, an emergency situation or orders from a superior were no excuse for resorting to torture.

6. In response to a question asked by the rapporteur, his delegation stressed that, following the anti-government disturbances in 1989, there had been no summary arrests or detentions of peaceful demonstrators, summary executions or widespread torture. The persons arrested had not been those who peacefully exercised their rights as citizens, but a handful of persons engaged in anti-government rioting and criminal activities, such as looting, arson and murder. Those individuals had been a threat to China and its social

system and had violated the rights of the majority, as well as the Constitution and Chinese penal law; they had been tried in strict conformity with Chinese law.

7. Questions had been asked about Tibet, which had been part of China since ancient times. It had enjoyed full autonomy since 1956. On a number of occasions over the past 30 years, a small minority had fomented disturbances, killing and injuring police officers and violating other Chinese laws. Those offenders had been tried in full conformity with the law, which prohibited torture regardless of race, religion or creed. Allegations of torture in Tibet had proved to be entirely unfounded; any further allegations would be investigated.

8. With regard to the death sentence in China, when such a sentence was handed down, a two-year stay of execution could be declared, during which time the offender had the chance to undergo reform through labour. If he showed signs of mending his ways, the death sentence could be commuted to 15 years' imprisonment; if he persisted in his criminal behaviour, the Supreme People's Court could carry out the death sentence. That showed the humanitarian spirit and cautious approach to the death sentence in Chinese law. Many death sentences had, in fact, been commuted. With regard to allegations of torture in Tibet, his delegation assured the Committee that it would investigate them.

9. Compensation for victims of torture was provided for in article 41 of the Constitution. Where losses resulted from an infringement of an individual's rights by government agents, the victim was entitled to compensation. That was also the case with administrative procedures. The measure was intended to compensate for the loss suffered by the victim, and not as a punishment. Its scope depended on individual circumstances. Partial or total responsibility for compensation as referred to in paragraph 33 of the Chinese report did not affect a victim's right to compensation.

10. Incidents involving the beating of prisoners had fallen by 87 per cent in 1989 as compared to 1988. As to whether information obtained under torture could be used in evidence, article 32 of the Criminal Procedure Law stipulated that the use of torture, threats, enticement, deceit or other such measures in gathering evidence was prohibited.

11. The Chinese judicial organs included the People's Court, the People's Procuratorate and the security organs. Those three types of judicial organ exercised different legal functions, but co-operated with each other, as well as acting as a system of checks and balances, as provided for in the Constitution and Criminal Code. Ordinary criminal cases were brought before the security organs. The Procuratorate decided whether there should be a prosecution. If it decided that no arrest was justified, the prisoner was immediately released. If the security organ did not accept that decision, it could request that the case be reconsidered and the prisoner was again released immediately. The three types of judicial organ co-operated throughout the criminal proceedings.

12. Some members of the Committee had asked whether the courts and the Procuratorate could function independently. That was indeed the case. The Constitution provided that the People's Court and the People's Procuratorate should be independent of the administrative organs, social groups and individuals. The judicial system was composed of the Supreme People's Court,

the Provincial, District and Special People's Courts, and the Local Courts. The Local Courts consisted of basic, middle-level, higher-level and special courts. Currently, the latter handled only military and naval cases, and cases concerning railways and transport. All criminal cases were tried by the aforementioned courts, and no adjudication took place outside those courts.

13. As to the appointment of judges, the system was currently being reformulated. Judges and prosecutors were all appointed by the administrative organs and were subjected to strict tests, not only of their ability, but also of their moral and other qualities.

14. Regarding the duration of pre-trial detention, article 48 of the Criminal Procedure Law provided that where a person was arrested by a public security organ, it must within three days request the People's Procuratorate to review and approve the arrest. That period might be extended by one to four days. The People's Procuratorate must decide within three days of the application whether or not to approve the arrest. In addition, article 97 of the Criminal Procedure Law stipulated that the People's Procuratorate must render a decision on such cases within one month. Where the case was a major one, an extension of half a month was permitted. Article 92 provided that the period of pre-trial custody must be no more than two months. Where the case was complex, the period might be further extended by one month. In highly complex cases or those of unusual importance, the Supreme People's Procuratorate might ask for approval to be postponed.

15. Regarding the rights and treatment of detainees, no cases existed of secret detention. As to the regulations governing detention establishments, article 28 of the Criminal Procedure Law provided that during detention criminals had the right to exchange letters and to meet members of their families. Under article 26, all detention establishments must have medical and pharmaceutical facilities. Sick prisoners had the right to treatment: if hospitalization was necessary, prisoners were treated in local hospitals; in cases of serious illness, prisoners might be released on bail. No cases existed of prisoners being held incommunicado, except where it was necessary to segregate male and female prisoners, adult and young prisoners, or certain categories of prisoner from other inmates.

16. Regarding paragraph 14 of the Chinese report, there had been cases - albeit very exceptional - where, in the interests of the investigation or to prevent the release of information or complicity, families were not notified of a person's arrest. In normal circumstances, the public security organs would inform the families. It was very rare for families not to be notified of an arrest on the grounds that such notification would hinder the investigation.

17. Regarding paragraph 46 of the report and the question of conclusive evidence, some members of the Committee had asked how, if no trial had yet taken place, conclusive evidence could be said to exist. The question was a good one: the matter had not been well expressed in the report. Article 41 of the Criminal Procedure Law provided that a public security organ might detain an active criminal or suspect (i) if he was preparing to commit, was committing or was discovered after having committed an offence; (ii) if he was identified by the victim or an eyewitness; (iii) if he had incriminating evidence about his person or in his residence; (iv) if he attempted to commit suicide or escape; (v) if he destroyed or falsified evidence, or colluded in

an attempt to conceal evidence; (vi) if his identity was not established or was acting suspiciously; or (vii) if he was guilty of disorderly and violent behaviour or of undermining work, production or the social order. No provision for amnesty existed under the criminal law, but such provision did exist under the Constitution.

18. Regarding the issue of capital punishment, the need for capital punishment was determined by the overall social and political situation and the need to combat crime, and by the wishes of the population as a whole. If a criminal minority went unpunished, then public order could not be guaranteed and basic rights could not be ensured. In the light of those considerations, the provision for capital punishment was retained. However, its application was extremely limited in scope. The death sentence was applicable only to the most serious cases. Where the death sentence was not immediately implemented, the sentence could be suspended for two years. If, within that period, the criminal showed himself repentant or of exemplary conduct, the sentence might be reduced to 15 to 20 years. The sentence was not carried out in the case of persons under 18 years of age or pregnant women. The Government considered it important to safeguard its citizens' right to life, and had thus always opposed summary or arbitrary sentences. Provision existed in the Constitution and the Criminal Procedure Law to prevent such occurrences. Under the Criminal Procedure Law, a suspect must first be tried before the middle-level people's court, then before the higher people's court. Provincial cases must be tried first before the higher people's court, then before the Supreme People's Court. National cases were tried at the Supreme People's Court, where a verdict was reached. To avoid the inappropriate use of capital punishment, the Criminal Procedure Law provided for a checking procedure whereby sentences were confirmed by the Supreme Court, or by the higher people's court on the authorization of the Supreme Court. Prisoners had the right to conduct their own defence. Where capital punishment was called for if an error was discovered before it was authorized then execution of the sentence was suspended pending a ruling.

19. The total number of persons tried and sentenced for serious offences, in 1989 was 481,658. That total comprised all prison sentences and death sentences. Questions had been asked about the system of reform through labour and rehabilitation through education. The Chinese reform organs were national organs, dealing with criminals in all sentence categories. The Government was strongly opposed to torture, and to all forms of cruel, inhuman or degrading treatment or punishment. Consequently, prisoners' legitimate rights were protected under Chinese law. The purpose of the law was not merely to impose a punishment, but to combine punishment and reform, with the emphasis on the latter, so that criminals might be turned into law-abiding citizens. The Government attached importance to criminals' welfare. Thus they received medical care and were given the healthy environment they needed. Their daily and medical expenses were met by the State, on the basis of the standards applicable in enterprises. Criminals benefited from the same level of labour protection as workers in enterprises. They were provided with bedding and facilities appropriate to the season, and with accommodation of not less than three square metres per person. In the event of sickness, they received medical treatment and pharmaceutical products free of charge. Prisoners received a monthly allowance, and if they fulfilled their production quota, they received a bonus. Bonuses were also available to those demonstrating technical knowledge. Prisoners worked an eight-hour day and were not required to work beyond the limits of their physical endurance. Nor were they required to work on public holidays.

20. The Chinese Government strictly forbade assaulting prisoners, verbal abuse, other ill-treatment, the extraction of confessions and corporal punishment. To guarantee their legal rights and livelihood, prisoners enjoyed the right of appeal, the right to legal defence, the right not to be insulted and the right to security. They also had the right to bring legal actions, and retained the right of ownership of their lawful possessions and any other citizens' rights that had not been taken away from them by a court ruling. Criminals could communicate with their families, who could visit them once or twice a month. In the event of the serious illness or death of a relative or other major family event, the imprisoned criminal, with the authorization of the prison governor, might be allowed to visit his home. Like other citizens, sentenced prisoners enjoyed freedom of belief and religion. Prisoners who were members of national minorities were allowed to observe their daily customs, and due consideration was given to those customs in providing them with appropriate care.

21. The Chinese Government attached great importance to the education of prisoners: in every prison there were regular political, cultural and technical classes. If a prisoner passed an examination, the local education and labour department would issue a certificate attesting to that fact. Through their studies, most criminals changed from immoral, selfish people with no regard for the law or any idea of the value of work to become moral, law-abiding, industrious individuals with skills and a degree of education, enabling them to reintegrate smoothly into social life. The fact that that was so reflected the humanitarian spirit of Chinese prisons.

22. Since May 1983, responsibility for prisons had been conferred on the judicial organs, and that had had two advantages. Firstly, when public security organs were placed within the judiciary system, they could supervise and check the judiciary and courts; there was then mutual supervision and problems of the abuse of authority were avoided. Secondly, the management and re-education of prisoners were strengthened thereby. Chinese experience was that the change had also helped improve the calibre of law enforcement officers.

23. In reply to the question whether there were any political prisoners in China, he denied that any existed. Chinese criminal law divided offences into two categories: counter-revolutionary offences and ordinary offences. Under Chinese criminal law, persons whose activities were aimed at overthrowing the people's democratic dictatorship and the socialist system or who wrought harm against the People's Republic of China had committed a counter-revolutionary offence. To have committed a counter-revolutionary offence, a person must have tried not only to overthrow State power and the socialist system, but his acts must also have constituted a threat to the security of the State. Merely contemplating counter-revolutionary acts was not an offence: a counter-re olutionary act must be committed for there to be an offence. There were therefore no prisoners of conscience or political prisoners in China.

24. In response to a question concerning military prisons, he confirmed that if soldiers on duty committed offences, the cases were dealt with by a military procuratorate and tried by military courts and their sentences were enforced by military organs.

25. Several members of the Committee had inquired about rehabilitation through labour. That practice was carried out according to the Decision of the Council of State approved on 1 August 1957 at the 78th meeting of the Standing Committee of the First National People's Congress. The Decision had been promulgated on 3 August 1957. Rehabilitation through labour was also governed by the additional regulations issued by the Council of State and approved at the 12th meeting of the Standing Committee of the Fifth National People's Congress on 29 November 1979, which had been promulgated on 5 December that year. Rehabilitation through labour was an administrative measure comprising reform through compulsory education aimed at preventing and reducing offences. It was mainly imposed on persons aged 16 or over who had refused to repent of repeatedly upsetting the social order or had committed minor offences for which punishment was thought inappropriate. The emphasis in rehabilitation through labour was on education and on saving the individual from crime. Rehabilitation through labour authorities had been set up in all provinces, autonomous regions, municipalities directly under central government control and large and medium-sized cities. Cases were reviewed by the local rehabilitation through labour authority, which would inform those involved and their families of the basis on which rehabilitation was to be carried out and how long it was to last. The person ordered to receive rehabilitation was required to sign the notice of the decision by the rehabilitation through labour authority, and if he refused to do so, he could appeal for review within 10 days of notice being served. Under article 11 of the Administrative Procedure Law, he might also file suit in court. The Law also stipulated that the activities of the rehabilitation through labour organs should be supervised by the people's procuratorate. With that stringent legal supervision, it was possible to prevent unlawful infringements of people's rights.

26. Persons undergoing rehabilitation through labour did so in special institutions set up by the State, in which they received political, cultural and technical education and were placed in production units, which helped to rectify their aberrant opinions and habits and give them a better idea of law and culture while they learned skills. The purpose of work organized by the rehabilitation through labour authority was to help the individual learn a skill which would enhance his employment prospects later. The type and amount of work done were determined according to the sex, age, physical condition and technical skills of the person involved. There were safety regulations and equipment to prevent injury, in line with the criteria goverening State enterprises in the same category. Protective clothing and a healthy diet were provided. Of persons passing out of the rehabilitation organs, over 90 per cent had been found to have reformed, becoming law-abiding citizens and living from the fruits of their own labours. The facts showed that rehabilitation through labour suited the Chinese situation and was in line with the needs of socialist construction. It was an important social-order measure and a major element in building a socialist legal system.

27. A number of questions had been asked about paragraph 36 of the report (CAT/C/7/Add.5). The popularization of legal education had received great attention from the Party and the Government, from the central Government down to the city level, where special organizations had been set up to handle the legal education programme. An enormous number of cadres had also been trained. The forms in which legal education was provided varied: public addresses around the cities, public exhibitions, education presented as entertainment and through the mass media. Legal education curricula had been

introduced into primary and middle-level schools, and there was a door-to-door service for senior citizens and the sick. Because of the flexible way in which the education was provided, the programme had been warmly welcomed in China.

28. The content of the legal education programme was such that not only internal laws were publicized and popularized, but also international laws and United Nations instruments, including the Convention against Torture. The courses were run at various levels, with particular emphasis on training courses for law enforcement officers. Examinations were set, and "A Survey of United Nations Activities in the field of Crime Prevention and Selections of Relevant Documents" had been published. Earlier in April 1990, the third national conference on legal education had been held, and had urged people to accept and make use of the legal education programme. The programme had yielded significant results throughout the country, increasing people's awareness of the basic principles of the law, improving their respect for the law, and leading to a reduction in the incidence of cruel and inhuman treatment throughout China.

29. He expressed the hope that his answers would satisfy the Committee, although they were necessarily brief. Some of the questions asked did not have easy answers, and he looked forward to answering them in his next report.

30. Mr. GIL LAVEDRA praised the efforts of the Chinese delegation in providing much valuable information in addition to that contained in the report (CAT/C/7/Add.5). More information was, however, required, for a number of his doubts had not been dispelled. He would welcome further, detailed information about the organization and structure of the criminal legal system and the court system as a whole, including the text of the Criminal Procedure law, details of penalties imposed and accompanying precise explanations.

31. He welcomed the fact that the Convention against Torture had become part of Chinese law and that Chinese law's definition of torture was in keeping with that given in article 1. It had not, however, been made clear what sanctions were applied against torture: such sanctions must necessarily remain the province of internal law, as the Convention did not and could not stipulate what they should be. It had been indicated that the penalty was three years' imprisonment: that did not appear to show that torture was regarded as particularly serious, and the Committee also lacked a clear frame of reference to indicate how seriously torture was viewed in relative terms. It had been said that due obedience was not regarded as an excuse; he wished to know the relevant provision.

32. With reference to article 15 of the Convention, it had been stated that under article 12 of the Criminal Code it was not permitted to extract confessions. That did not, however, answer the question whether any confession so extracted could be accepted as valid evidence. Under the Convention, it should not.

33. He requested additional information on legal texts explaining which constitutional principles were applied in criminal law, with particular reference to the presumption of innocence and the principles of the International Covenant on Civil and Political Rights. Additional information about the organization of the judiciary would give the Committee a better idea of how impartial and independent the courts were. The Committee would also

wish to know of any legislation which in its application might facilitate torture. For example, it was an offence to engage in counter-revolutionary propaganda or insult the army; in his view, provisions of that kind were open to considerable abuse, although that was not the spirit of Chinese legislation or the intention of the Chinese Government. The Committee would also like to know about the procedures applied for certain offences. Reference had been made to people's tribunals and to special, accelerated procedures. How did those work?

34. He felt that the legislation relating to pre-trial detention could be considerably improved. He appreciated the fact that no one was held incommunicado and that the family was informed of the arrest of one of its members, but it had been said that there were exceptions. What were those exceptions? He suggested that compulsory medical examination of detainees might help prevent torture. Also, he was not sure how long it was before detaineees were brought before a court.

35. Although China was making great efforts to educate and inform, the admissions contained in the report showed that torture was still continuing, i.e. that the material objective of the Convention had not been fulfilled. He therefore called for an additional report to show what progress had been made towards the complete eradication of torture. Imagination was required in finding ways to control the situation, and the Chairman had offered the Committee's assistance in that regard.

36. Ms. CHANET said that although she was grateful to the Chinese delegation for its full replies, she was not entirely satisfied with the answers to her questions. The Chinese delegation had said that internal legislation was in conformity with the objectives of the Convention, but she wished to point out that the content of the Convention must become part of positive internal law. Regrettably, no specific definition of torture had been included in Chinese legislation so as to ensure that torture was an offence under criminal law. The Committee had been told that 1.5 million complaints had been submitted and that there had been 382 cases of irregularities in prisons, but had not been told what the follow-up had been.

37. She was still not clear about the cases in which the death penalty was provided for in the Criminal Code and she found the suspended death sentence particularly cruel. She had had no reply to her question about the role of medical personnel in finding out whether torture had taken place and the number of such personnel. Were there any independent doctors in State hospitals?

38. She agreed with Mr. Gil Lavedra that there was a difference between preventing the extraction of confession by torture and ensuring that such confessions had no evidential weight in a court of law. Moreover, nothing had been said concerning universal competence (Convention, arts. 5 and 7). The Chinese delegation had informed the Committee of the existence of military jurisdictions which had a function in putting down counter-revolutionary activities. She would welcome details of any special laws and regulations on detention under those jurisdictions. She had noted the delegation's assurances that investigations would be carried out by the Chinese authorities into cases mentioned by members of the Committee. She was particularly interested in the case of Tibet mentioned in the report of the Special Rapporteur.

39. She agreed with Mr. Gil Lavedra that it would be useful to have a supplementary report before the next report that was due.

40. Mr. DIPANDA MOUELLE thanked the Chinese delegation for its efforts to give succinct answers which had however been rather general, and many questions remained unanswered. In particular, he wished to know about the exact competence of, and relations between, the organs of security of the People's Courts and Procuratorates in the administration of justice.

41. The Committee had been told that judges were appointed by the legislative bodies. Did that mean the People's National Congress and, if so, how were the appointments effected? He agreed with Ms. Chanet that the suspended death sentence amounted to inhuman and degrading treatment. He also agreed that there was a need for additional information to be provided before the next report.

42. Mr. SORENSEN thanked the Chinese delegation for its replies, but pointed out that no answers had been given to questions on articles 2-16.

43. He had read with deep concern the material alleging torture in China that had been submitted to the Committee, especially since it was admitted in the report that torture was indeed being practised. The delegation's replies had not reassured him. He therefore requested a supplementary report with the missing answers to the questions on articles 2-16 arranged in systematic fashion as requested in the Committee's guidelines, and full information on the various cases of torture, with details of investigations carried out and their results, the punishment of torturers and the rehabilitation of victims.

44. He looked forward to seeing that report. He realized it had been impossible for the Chinese delegation to reply in such a short time to all the questions asked by members of the Committee.

45. Mr. MIKHAILOV also thanked the delegation of China for its replies. All his own questions had been answered, but he agreed that it was absolutely essential to have additional information in writing which would enable the Committee to draw conclusions and make proposals for its next session.

46. Mr. BURNS subscribed to the views already expressed and asked for a supplementary report with additional information as soon as possible. He was particularly interested in information on the death penalty in China and the autonomous region of Tibet, and wished to know how many executions had been carried out in Tibet since 1985 and in China since 1 June 1989 and which offences had given rise to that punishment. He also wished to have precise data on the number of prosecutions for acts of torture in the autonomous region of Tibet since 1985 and in China since 1 June 1989, and to know whether or not the prosecutions had been successful.

47. Mr. KHITRIN said that the Chinese delegation had dealt in great detail with the questions put by members of the Committee. Unfortunately a number of questions remained unanswered. The Committee should be given additional information, in accordance with rule 67, paragraph 2, of the rules of procedure.

48. Ms. DIAZ PALACIOS thanked the Chinese delegation for its effort to reply to the many questions put by members of the Committee but subscribed to the consensus that the Committee should ask for a more detailed and analytical report.

49. The CHAIRMAN thanked the Chinese delegation for having replied to the Committee's many questions, which was no easy task. The questions had been numerous because of the brevity of the report. He therefore agreed that the Committee should, in accordance with rule 67, paragraph 2, of the rules of procedure, request an additional report, if possible by the end of the year so that it could be considered at the spring session in 1991.

50. Mr. FAN Guoxiang (China) said that he and his colleagues had done their best in a short time to reply to the many questions put by members of the Committee. The Chinese Government attached great importance to humanitarian values and had always opposed torture, and the country's legislation already contained provisions to combat it. The situation was not, of course, perfect but the Government was working hard to prohibit and prevent torture, and in the context of a population of 1.1 billion, cases of torture were not numerous. Figures could be misleading. In fact, there were many good examples of opposition to torture in China. Definitions of torture varied, so that what in the Chinese view was positive might be considered negative elsewhere. He did not believe that there were very many cases of torture in China and could not accept untrue allegations.

51. He was not authorized to accede to the Committee's request for a further report, but would transmit it to his Government. He thanked the members for their comments and looked forward to future collaboration with the Committee.

52. The CHAIRMAN thanked the Chinese representative for his statement. The Committee was very happy to be able to co-operate with the Government of China, which, like the Committee, wished to eradicate torture. He hoped that the Government of China would be able to provide the Committee with an additional report reflecting the questions asked by members, which had been noted by the Chinese representatives and were reflected in the summary record. The report should be set out in accordance with the Committee's guidelines: after a description of the judicial, police and prison systems, with general and legislative details, information should be provided in the order of the articles of the Convention. In addition, the Committee would like to have answers to the questions to which replies had not been given.

53. He inquired whether the Chinese Government was interested in co-operating with the United Nations Centre for Human Rights, which was equipped to disseminate information on human rights, and particularly on torture.

54. Mr. SHEN Jinchu said that the Chinese Government was already receiving good co-operation from the Centre for Human Rights but would welcome assistance in distributing in China materials such as the Constitution and laws.

55. The CHAIRMAN thanked the delegation of China for its co-operation and looked forward to meeting it again in a spirit of co-operation.

The meeting rose at 6.20 p.m.

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COMMITTEE AGAINST TORTURE

Fourth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 52nd MEETING

Held at the Palais des Nations, Geneva,
on Monday, 30 April 1990, at 10 a.m.

Chairman: Mr. VOYAME

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Consideration of reports submitted by States parties under article 19 of the Convention (continued)

Initial report of the Ukrainian Soviet Socialist Republic

* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.52/Add.1.

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The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7) (continued)

Initial report of the Ukrainian Soviet Socialist Republic (CAT/C/5/Add.20)

1. At the invitation of the Chairman, Mr. Bourtchak, Mr. Osnatch and Mr. Maimeskoul (Ukrainian Soviet Socialist Republic) took their places at the Committee table.

2. Mr. BOURTCHAK (Ukrainian Soviet Socialist Republic) said that his delegation was pleased to acknowledge the already fruitful co-operation between the Ukrainian SSR and the treaty bodies set up under international human rights instruments, which had enabled his country not only to become familiar with the practices of other States, but also to bring its domestic law as closely as possible into line with the requirements of the covenants and pacts of which it was a signatory.

3. As everyone was aware, a genuinely revolutionary process was currently taking place in the Ukrainian SSR, where the reforms in progress would radically alter the legal situation of the individual and guarantee all rights and freedoms. The amendment of the legislation and reform of the judicial system had to be seen against the general background of the strengthening of democracy, fundamental economic reforms and efforts to establish the rule of law.

4. The Supreme Soviet of the Ukrainian SSR, the composition of which had just been renewed by genuinely democratic elections, would be adopting major legislative measures as soon as its session began on 15 May 1990. It would be required, in particular, to examine 14 bills, a number of which were concerned with the amendment of the Constitution of the Republic and reform of the legal system. It would have before it under the latter heading draft proposals for a new criminal code, a new code of criminal procedure and a new code on rehabilitation by work.

5. It was important to emphasize that those activities were by no means purely formal and that the public was closely involved, especially as a result of the direct television coverage of discussions in the Supreme Soviet. The public was reacting on a massive scale by writing to deputies, expressing their views in the media and organizing meetings. Every citizen, in his awareness of past violations of legal principles, was working hard to safeguard human rights and help establish machinery capable of ensuring once and for all that the tragic events of the past never occurred again.

6. The principal aim of the current reform of the legal system was to guarantee the independence of the judiciary. To that end, the Presidium of the Supreme Soviet of the Ukrainian SSR had adopted, on 15 December 1989, four decrees dealing respectively with training lectures to be given to magistrates, training colleges for magistrates, the responsibilities of judges together with the corresponding disciplinary penalties, and the new text of the oath to be sworn by magistrates. A new law on the organization of the judiciary was also being drafted with the aim of enhancing the prestige of the courts. The Presidium of the Supreme Soviet of the Ukrainian SSR had also

approved, on 13 February 1990, the statutes of the Provisional Committee to combat criminality in the Ukrainian SSR, one of the duties of which was to supervise the activities of the law enforcement services. It was also intended to set up a commission specifically responsible for such questions within the Supreme Soviet.

7. The law provided that detention during the pre-trial proceedings might not exceed a period of two months. After the two months had elapsed the detention might be extended, by the judge, to three months if the state of the investigation so required. If the case involved special difficulties, detention might be extended to six months at the request of the Regional Procurator and up to a maximum of nine months at the request of the Procurator of the Republic. It could only be extended beyond nine months in exceptional cases and where the individuals in question were implicated in particularly serious crimes. It could be extended up to 12 months at the request of the Deputy Procurator General of the USSR and up to 18 months at the request of the Procurator General. In the latter case, a prior opinion must have been issued by the Procurator-General's Office of the USSR. The Supreme Soviet of the USSR had previously been empowered to extend the pre-trial detention period still further but the new provisions no longer permitted such action and, if not prosecuted, the suspect had to be released without fail after 18 months.

8. Henceforth - an important innovation in Soviet criminal procedure - everyone was entitled to the assistance of a lawyer as soon as the bill of indictment had been issued, and that would make it possible to eradicate entirely the violations of the law which had sometimes occurred during pre-trial detention. It should be emphasized in that connection that cases of abuse of power by officials of the Ministry of the Interior were decreasing from year to year, only eight officials having been found guilty of such abuse in 1989 as against 67 in 1985. There were two reasons for that reduction in the figures, namely, the improved training of officials and the greater political vigilance of the general public.

9. The humanization of the penal legislation since 1977 had enabled various prison sentences to be replaced by work rehabilitation orders or fines. As things currently stood, only one convicted prisoner out of three received a custodial sentence (as against one out of two previously). At the same time, the numbers of persons held in work rehabilitation camps had decreased by 50 per cent during the past three years (88,000 in the Ukrainian SSR at the beginning of 1990). Since the approval by the Presidium of the Supreme Soviet of the Ukrainian SSR of the decree of 12 June 1987, persons convicted of premeditated crime, and sentenced to not more than five years' deprivation of liberty were permitted to serve their sentences in work rehabilitation colonies, where they could live with their families.

10. On the other hand, all regulation which the passage of time had shown to contribute to the maintenance of law and order had been retained in the new draft codes. The services responsible for the maintenance of law and order had acted resolutely against officials who contravened the law and 247 persons had been dismissed on those grounds during 1989 alone.

11. The new legislation was aimed at reducing the number of offences carrying the death penalty. Capital punishment was in practice only imposed on persons who had committed particularly odious crimes. Although he himself was

personally opposed to capital punishment, he wished to point out that four fifths of the population of the Ukrainian SSR were in favour of capital punishment. It would accordingly be retained in the new penal code, although the number of capital offences would be substantially reduced. An alternative custodial sentence could be imposed by the court in all cases, moreover, and capital punishment was not allowed in the case of minors, women and persons over the age of 60. Short custodial sentences would also be retained.

12. The new Code of Criminal Procedure provided for the preliminary investigation to be completely independent of both the search for criminals and the supervision of convicted persons in prison. A corresponding decision had already been adopted by the Supreme Soviet of the USSR.

13. The rights of prisoners would be considerably increased, enabling them to enjoy more frequent visits from relatives and friends and to receive letters and parcels without difficulty. Provision had also been made for short periods of leave on health grounds and for additional facilities for sick or disabled persons and pregnant women held in detention.

14. The Ukrainian SSR attached great importance to the training of law enforcement officers. The study of international covenants and other human rights instruments occupied a key place in all the law schools and faculties of law in the Republic.

15. Mr. GIL LAVEDRA paid tribute to the efforts made by the Ukrainian Soviet Socialist Republic to amend its legislation so as to ensure a more thorough respect for human rights. Although it was difficult at the current stage to arrive at a complete assessment of the reforms in progress, the bills being prepared were certainly an encouraging sign. The next report from the Ukrainian SSR would undoubtedly enable the Committee to assess the efficacy of the measures that had been adopted.

16. In connection with paragraph 10 of the report, which stated that the provisions of the Convention could be invoked before the courts, he wished to know whether those provisions were directly applicable and whether all or only some of the provisions of the Convention had been incorporated into domestic legislation.

17. With respect to paragraph 14, which dealt with the steps to be taken when an official appeared to have performed actions of an illegal nature, he asked what the relationship was between the procurator and the investigator, since he thought it inconceivable that the procurator could entrust the investigation to the examining magistrate.

18. Paragraph 20 stated that an order from a superior or from a public authority might not be invoked as a justification for torture. It would be useful to know what regulation established that principle.

19. In connection with paragraph 21 on the right of asylum, he would like to know what connection there was between article 36 of the Constitution and the obligation imposed by article 3 of the Convention.

20. In connection with paragraph 24, which dealt with the crime of torture, the question arose what precisely was the effect of the articles of the

Criminal Code that had been mentioned. Under article 175 of the Criminal Code, for example, the use of coercion or violence to obtain confessions seemed to fall under the definition of torture set out in article 1 of the Convention, but he would like to know the situation with regard to the other articles which had been quoted. He would also like details of the punishments imposed on persons found guilty of such abuses.

21. Referring to paragraphs 28 to 33, which related to article 5 of the Convention, he said he would like to have further information on the scope of the criminal jurisdiction of the Ukrainian SSR. The statement in paragraph 33 concerning its criminal jurisdiction in respect of offences committed abroad appeared to run counter to the spirit of the Convention. Furthermore, the texts of paragraphs 29 to 31 of the report cast no light on the concrete cases in which Ukrainian legislation enabled persons committing offences abroad to be prosecuted. He recalled that the purpose of the Convention was to ensure that any person committing any of the offences defined in it would be prosecuted, irrespective of the country in which he was to be found. He also wondered which of the provisions of the Convention were referred to in paragraph 32 of the report.

22. As for paragraph 40 relating to legal assistance to other States, he wished to emphasize that the obligation to assist other States in criminal cases, imposed on the Ukrainian SSR by the Convention, was quite separate from any obligations which might have been incurred contractually under international treaties.

23. In connection with the draft code of criminal procedure and the question of pre-trial detention during the investigation stage to which the representative of the Ukrainian SSR had referred his oral introduction, he would like to have some details regarding the possibility of incommunicado detention and its maximum duration. He would also like to know how long a person could be held incommunicado before being brought before the court and whether any provision was made for medical examination, either obligatory or optional.

24. Mr. MIKHAILOV said that the report before the Committee was both clear and dense, although very succinct.

25. Paragraph 6 stated that article 56 of the Ukrainian Constitution established the right to compensation of victims of illegal acts committed by State organizations. He would like to know whether there were any special provisions in the legislation to apply that article and, if so, what scale of material compensation was laid down.

26. In connection with paragraph 10, like Mr. Gil Lavedra, he would welcome information as to which of the provisions of the Convention were directly applicable in the Ukrainian SSR and the legal machinery incorporating them into domestic legislation. He would also like to know what happened when the provisions of the Convention were invoked before the courts.

27. With regard to paragraph 16, on the right of appeal against the actions and decisions of the procurator and court to a higher procurator or court, it would be useful to know what provisions governed the exercise of that right in

practice, how the victim of cruel treatment should proceed to, lodge such an appeal, the guarantees ensuring the appeal and what possible effects might result therefrom.

28. With regard to paragraph 24, he would also welcome an answer to the question asked by Mr. Gil Lavedra concerning article 175 of the Penal Code which punished any exercise of coercion or force during an inquiry or preliminary investigation by means of custodial sentence. More details of that particular punishment would be welcome and he would also like to know whether there were any other provisions in the Code of Criminal Procedure which supplemented those of that article in accordance with the spirit of the Convention?

29. He would welcome details of the training programmes for law-enforcement officers (paragraphs 42 and 43).

30. Capital punishment, which had been mentioned by the representative of the Ukrainian SSR, was a subject of spirited argument in all Eastern European countries, not least in his own country, Bulgaria. Having himself spoken out in favour of the abolition of the death penalty, he had been accused of siding with the criminals rather than defending their victims. Even though public opinion was not always in favour of the abolition of the death penalty, there was no doubt that it would be applied less and less frequently. He had the impression that efforts were being made in that direction in the Ukrainian SSR, but he would nevertheless like to know what legislative provisions had been adopted to limit the application of the death penalty.

31. Although Ukrainian legislation and the Ukrainian Criminal Code included some democratic provisions, there appeared to be some distance between theory and practice. He wished to know, therefore, what concrete measures had been adopted to ensure the effective enjoyment of the prescribed rights.

32. The periods of pre-trial detention allowed during the investigation ran counter to democratic principles. He would like to know why it might be necessary to extend the period of pre-trial detention to such an extent. Experience in Bulgaria had indeed shown that a certain amount of time was required to establish whether a person was responsible for an offence but, once the evidence had been collected, there was no reason to prolong the detention unduly. Two months should, in principle, be sufficient in the case of a murder or a crime with aggravating circumstances; the investigation into other offences should be completed within even shorter periods. Unreasonable prolongation of detention during investigations or of pre-trial detention would constitute a violation of the person's fundamental rights.

33. Mr. SØRENSEN, having thanked the representative of the Ukraine for introducing a most interesting report, said that there were still a few questions which he would like to ask.

34. It was not clear from paragraph 7 of the report in what type of criminal actions the right to legal assistance was guaranteed, and whether they included political offences. He also wished to know how legal aid was

granted, whether the defendant had to submit a request, by whom the cost of legal aid was covered, whether the State was duty-bound to grant such aid and whether there was an adequate number of lawyers.

35. Paragraph 15 of the report did not specify what punishments were prescribed for the crime of torture. Paragraph 25 stated that anyone putting a person known to be mentally healthy in a psychiatric hospital would be liable to prosecution. That would seem to imply that it was lawful to commit to a psychiatric hospital a person known not to be mentally healthy, even if that person did not want to be committed. If so, he wished to know who was qualified to pronounce on the mental health of a particular person, whether there was any appeal against such a decision and to what authority, and who selected the psychiatrist responsible for pronouncing on a person's mental health.

36. He wondered whether, during their training, law-enforcement officers received specific instruction on a prohibition of torture and on ways of identifying the victims of torture and whether training in the care of torture victims was given to medical personnel. While he was fully aware that the legal system of the Ukrainian SSR provided for full compensation for any damage, even moral damage, caused to the victims of torture, he would like to know whether any provision had been made for medical rehabilitation also. The question also arose whether compensation to a citizen for damage resulting from an illegal conviction was granted automatically or whether the victim had to take legal action to secure it.

37. Mrs. CHANET said she regretted that the report of the Ukrainian SSR contained no concrete details on the practical implementation of the Convention, the more so since paragraph 18 mentioned that measures had been adopted to eliminate unlawful conduct that was currently occurring, thus implying that difficulties were still being encountered in the Ukrainian SSR, as in a number of other countries.

38. The place occupied by the Convention in the domestic law of the Ukrainian SSR was not too clear. It was evident from the report that, although some of the provisions of the Convention were reflected in domestic legislation, others were not so covered. In the absence of specific legislation implementing the Convention, it was difficult to see how the general machinery would enable effect to be given to all the provisions of the Convention.

39. In connection with judicial guarantees, it appeared that the periods of detention allowed during the pre-trial proceedings - from 2 and 18 months - were excessive and amounted to more than just pre-trial detention. Since such detention was ordered by the procurator, the question arose whether any remedy was available during the detention and whether any provision was made for intervention by the court, or any form of supervision, to prevent ill-treatment during the detention period.

40. With regard to the protection of persons committed to psychiatric hospitals, she would like to know whether the provision of legal aid was envisaged, as would henceforth be the case when a person was arrested, from the time of the arrest. She also asked whether it was true that persons who had applied for a legal remedy, especially during their detention, had been punished.

41. According to an article in Izvestia, incommunicado detention was authorized in the Ukrainian SSR; it would be useful to know in what circumstances it could take place, what was its maximum duration and whether medical examinations were systematically carried out.

42. It was difficult to know whether the term "force" used in the report corresponded to the definition of torture given in the Convention, a particularly important question since the deprivation of liberty which could be imposed for the offences represented as equivalent to torture did not exceed three years.

43. The argument put forward by the representative of the Ukrainian SSR in his oral presentation, namely, that abolition of the death penalty was not envisaged because of the opposition of the general public was not really valid. Surveys in all the countries of the world invariably showed public opinion to be in favour of the death penalty and it was always left to parliament or the Government to take the initiative for its abolition.

44. Detailed explanations would be required concerning the paragraphs dealing with article 5 of the Convention, particularly paragraphs 32 and 33, which appeared to be contradictory.

45. Lastly, further information and examples would be helpful in indicating the nature of the "full compensation" referred to in paragraph 52.

46. Mr. BURNS recalled, first of all, that the Ukrainian SSR had entered reservations concerning articles 20 and 30 of the Convention and had not made the declarations provided for in articles 21 and 22.

47. The statement in paragraph 5 of the report that citizens had the right to lodge a complaint against the actions of officials led to the question how many such complaints had been lodged, during the past year for example, and what had been their outcome.

48. It would be of interest to know how the independence of the judiciary was guaranteed and, in particular, what procedure was adopted for the appointment and dismissal of judges and assessors and to what disciplinary measures they were subject.

49. Nothing in the report provided any assurance that the definition of torture given in article 1 of the Convention was reproduced in any of the provisions of the Criminal Code.

50. Referring to paragraph 21 of the report which stated that the right of asylum might be granted to foreigners, he asked whether the Ukrainian SSR recognized its jurisdiction if an individual to whom it had granted asylum was accused of having been a torturer in another country. That question was all the more important, in that paragraphs 32 and 33 seemed to contradict each other on the subject.

51. Paragraph 22 stated that the Code of Criminal Procedure prohibited the use of force, threats or other unlawful means to obtain statements. It was not clear, however, whether such statements or confessions obtained by unlawful means could be admissible during the trial.

52. He asked whether incommunicado detention was practised in the Ukrainian SSR and in what circumstances it might be imposed. A distinction had to be made between the solitary confinement of a convicted person, imposed in almost all countries as a disciplinary measure, and the incommunicado detention of a mere suspect. He would also like to know whether any form of corporal punishment was imposed other than capital punishment, with particular reference to what was actually meant by the expression "corrective labour".

53. It would be of great interest to have a summary of the Supreme Court decision referred to in paragraph 47 of the report. He would also like to know whether any of the security organs of the State were allowed to operate outside the Constitution or whether all such organs were subject in practice to the provisions of the Constitution.

54. Mr. DIPANDA MOUELLE, having endorsed many of the questions asked and the comments made by the other members of the Committee, asked in addition for details on the disciplinary courts referred to by the representative of the Ukrainian SSR in his oral introduction.

55. Further information was needed to clarify paragraph 25 which stated that an official was liable to prosecution "... for instituting criminal proceedings against a person known to be innocent". He wondered whether that meant that any person who had been acquitted, i.e. declared innocent, was entitled to bring an action for unlawful prosecution.

56. Referring to court decisions, he asked what the procedure was where a criminal inquiry or investigation was recognized to have been unlawful. He, too, would like to know the terms of the decision of the Plenum of the Supreme Court referred to in paragraph 47 of the report.

57. Additional information on prison conditions and on the existence of any political prisoners would be welcome.

58. The CHAIRMAN, speaking in his capacity as a member of the Committee, said that he had been pleased to read in paragraph 1 of the report that the Ukrainian SSR had consistently been in favour of eliminating the shameful practice of torture; he awaited with interest further information, in a subsequent report, on the results of the recent and current legislative reforms.

59. It was not entirely clear from the report whether international treaties were directly applicable, a particularly important question since no act had been passed to apply the Convention.

60. He would welcome details on the organization of the system of justice and on the rights and duties of the police and of examining magistrates. It would also be necessary to have further details of the period of detention during the pre-trial investigations and on all the guarantees of the independence of examining magistrates and procurators. A detailed description of the organization of the courts, together with an account of the available legal remedies and the distribution of jurisdiction among the courts based on types of offences and an indication of the composition of those courts, would be particularly useful.

61. Some members of the Committee had deemed the average duration of pre-trial detention to be excessive. The complexity of a case might, however, prevent the investigation from being rapidly completed. It was very important, on the other hand, to know whether incommunicado detention was permitted and, if so, what period of such detention was authorized.

62. Article 3 of the Convention, referred to in paragraph 21 of the report, went well beyond the mere right of asylum and there were cases in which the authorities might be called upon to expel a person who had not requested asylum. Article 3 should be applicable in all cases.

63. He would like to know, in connection with article 14 of the Convention, whether any convictions had been obtained in respect of torture, in how many cases and what punishments had been imposed.

64. Paragraphs 28 to 36, dealing with articles 5 and 6 of the Convention, were rather obscure and failed to make it clear whether the rule aut dedere aut judicare was consistently and generally applicable. Furthermore, the information on extradition (paragraph 39 of the report) was not sufficient to give an idea of the real application of article 8.

65. Whereas article 11 of the Convention enjoined the State party to "keep under systematic review interrogation rules, instructions, methods and practices ...", paragraph 41 of the report merely stated that the observance of those rules was continuously monitored by the judicial authorities; more detail was required.

66. In connection with articles 12, 13 and 14 of the Convention, he, too, like other members of the Committee, would appreciate some information on the number of cases brought before the courts and what had been the outcome of the prosecution in each case.

67. It would also be of interest to have the text of the Supreme Court decision referred to in paragraph 47 of the report or, at very least, to have a summary of its content.

68. Lastly, he asked whether the Ukrainian SSR had encountered any difficulties in applying the Convention. Ukrainian legislation appeared to be very democratic, but he wondered whether it was really true that no police brutality and no ill-treatment of detainees or persons held in psychiatric hospitals had occurred.

The public meeting rose at 11.30 a.m.

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Fourth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 53rd MEETING

Held at the Palais des Nations, Geneva,
on Monday, 30 April 1990, at 3 p.m.

Chairman: Mr. VOYAME

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.53/Add.1.

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The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7)

Initial report of the Ukrainian Soviet Socialist Republic (continued) (CAT/C/5/Add.20)

1. Mr. BOURTCHAK (Ukrainian Soviet Socialist Republic), referring to the relationship between the Convention against Torture and his country's domestic legislation, said that the Criminal Code and Code of Criminal Procedure contained no general norms regarding the primacy of international instruments. When they had first been drawn up, it had been suggested that international obligations would be reflected in internal law. Later, in drawing up the Civil Code, the Family Code and other legislative acts regarding the environment, it had been proposed that, where there was a conflict between international and domestic law, the international treaty would prevail. References to international obligations were always permitted in the courts. Moreover, when an international obligation existed, it took precedence over domestic legislation. In the preparation of future legislation, the rule of the primacy of a convention would be enshrined in law.

2. Mr. Gil Lavedra had asked whether there could be any release from responsibility in the event of torture. Under current legislation, the person ordering the torture was as liable as the executor of that order. If torture had taken place, then both the issuer of the order and the perpetrator of the act of torture would be liable under law.

3. Some members of the Committee had asked how torture was defined in Ukrainian law and what penalties were provided for. Ms. Chanet had observed that a maximum penalty of three years seemed somewhat lenient. Others had asked whether any special penalties existed for the offence of torture. In point of fact, the term "torture" did not exist in Ukrainian legislation. However, a special chapter in the Law on Crimes against the Administration of Justice established liability for a whole range of unlawful acts, including deliberate illegal arrest, illegal sentencing, false denunciation, obtaining statements by force and giving false evidence. The maximum sentence provided for was not limited to three years: for some cases of serious offence, there was provision for sentences of up to eight years' deprivation of liberty. A penalty of three years' imprisonment could indeed be imposed for unlawfully forcing a person to give evidence during an interrogation. But when the unlawful acts involved the use of violence or humiliating treatment, a penalty of up to eight years' deprivation of liberty was provided for. While the term "torture" had not been defined, such use of violence or humiliating treatment was of course regarded as physical or mental torture. The Law on Crimes against the Administration of Justice also contained provisions regarding acts performed ultra vires. If such acts involved the use of violence, weapons or other humiliating treatment, they were tantamount to torture and provision existed for a penalty of up to eight years.

4. Mr. Gil Lavedra had pointed out that the report contained no clear account of the situation regarding liability for offences committed abroad. Where the offence was committed on Ukrainian territory, all persons, whether citizens, stateless persons or aliens enjoying diplomatic immunity, were liable under the criminal laws of the Ukrainian Soviet Socialist Republic.

Where the offence was committed abroad, citizens of the Union of Soviet Socialist Republics committing such crimes were liable to prosecution on their return. Currently, persons committing such offences were liable under Ukrainian law, regardless of whether they were also liable to prosecution abroad. Under the new draft Basic Principles currently being submitted for nation-wide discussion, that possibility would be excluded, and no person would be liable to be prosecuted twice for the same offence. A stateless person was liable if the offence had been committed abroad. With regard to foreigners, if the offence was not provided for in an agreement between the Ukrainian Soviet Socialist Republic or the Union of Soviet Socialist Republics and the foreign State, then such persons were not liable to prosecution for the offence. In that case, the laws of the country where the offence had been committed were applicable.

5. Mr. Gil Lavedra had also asked for more information about the maximum period for which persons could be held in solitary confinement. The law clearly regulated the actual duration of custody. For administrative offences, a person could be held for no more than three hours. Where a person was suspected of having committed an offence, the law regulating temporary custody of suspects laid down that detention could last no longer than three days. The procurator must be notified of the arrest within 24 hours, and must either authorize the arrest or arrange for the detainee's release within 48 hours. If a person was detained for three days, the investigating body must inform the suspect's family, provided their whereabouts were known, except in the case of a serious offence, where the family was notified only if such notification was not liable to hamper the investigation. In the case of juveniles, however, parents or guardians were automatically informed, as was also the case if an arrest was authorized.

6. Regarding the law and practice of compensation, there had been a radical renewal of the law and procedure in 1984, to bring the legislation more closely into line with international instruments and humane principles. A new article 53 (i) had been inserted in the Code of Criminal Procedure, on the basis of a decree of the Praesidium of the Supreme Soviet dated 16 April 1984. It provided that where a case was discontinued in the absence of evidence of an offence or because a person's participation in the offence was not proven, or on his acquittal, the procurator must inform him of the procedure for compensation. Compensation was provided in full, and included compensation for loss of earnings.

7. Members of the Committee had asked what forms of harsh treatment could be the subject of a complaint to the procurator, and what procedural safeguards existed. The decision whether to lodge a complaint with the court or with the procurator hinged on the stage reached in the proceedings. Where the harsh treatment had been inflicted at the preliminary investigation stage, the victim would lodge a complaint with the procurator. If it had been inflicted at the committal or trial stage, the victim would appeal to the court. The basic provision on the matter was article 22 of the Code of Criminal Procedure, which laid down general rules and had been substantially amended in 1984, prohibiting extraction of evidence by coercion, violence, threats or other illicit action. The relevant legislation was further developed in other provisions, such as article 23 (ii), which stipulated that if the court found that the accused's rights had been violated, it must draw attention to the fact in a separate determination issued at the same time as the sentence was handed down. Article 25 provided that the procurator must take measures to

eliminate those irregularities regardless of who had committed them. Article 43 set forth the rights of the accused, who had the right to file a complaint against any measures by the investigator, the procurator or the court. Article 44 set out the procedure for an appeal against actions by the investigating officer. In particular, that officer must, within 24 hours, transmit any complaint to the procurator, together with an explanatory memorandum. Article 227 provided that the procurator should remove the investigating officer from the case if he had violated the law.

8. The death penalty had been abolished on no less than three occasions in the history of his country. In 1949, it had been reinstated, mainly in response to pressure from public opinion. He conceded, however, that it was the duty of a progressive legislature to move towards its abolition, and that was in fact the trend. The 17 capital offences enumerated in the old Code had been reduced to 6 in the new Code: offences against the person, aggravated homicide, high treason, terrorism, rape of a minor and sabotage. That list might be further reduced in the new draft legislation currently under discussion, although account must also be taken of public opinion in that regard. Currently, the death sentence could not be carried out on minors and pregnant women. However, in practice, no death sentences had been carried out on women in the past 15 years, and in the past 10 years there had been only one case, involving a war crime dating from the Second World War, of a person over the age of 60 being executed. An attempt would be made to enshrine that practice in law by means of the new legislation currently being drafted.

9. Mr. Mikhailov had asked a key question about the extent to which the law and actual practice diverged. They did indeed differ. Until recently, judges had often taken account, not of the evidence submitted in court, as was required by law, but of evidence obtained during the preliminary investigation. Three years previously, the Supreme Court had pointed to the inadmissibility of such a discrepancy between law and practice. While he could not state categorically that such discrepancies had been entirely eliminated, he was able to assert that, should a case go before the Supreme Court, the law always prevailed.

10. With regard to paragraph 7 of the report, Mr. Sorensen had asked in what circumstances legal assistance was available, how it was financed and whether the country had enough lawyers. The Law on Advocates set forth the circumstances in which assistance was to be provided, and those in which it was available free of charge. In criminal cases, under article 93 of the Code of Criminal Procedure, legal and interpretation expenses might be borne by the State if the accused was unable to pay them. Advocates' fees were paid either by the State or by the convicted person in the course of his sentence. In civil cases, the College of Advocates, a self-governing public organization, provided legal assistance free of charge in cases concerning a whole range of disputes brought before courts of first instance. Currently his country did not have enough lawyers, but steps were being taken to train more, especially since perestroika had further increase the demand for them.

11. Mr. Sorensen had also asked in what circumstances a person could be committed to a psychiatric institution, who took the decision to commit him and in what circumstances he might be discharged. Since 1988, in response to widespread criticism of his country for its abuse of psychiatric treatment, much had been done in that field. The provisions governing psychiatric care

had been regulated by law, via the decree of the Praesidium of the Supreme Soviet of the USSR dated 5 January 1988. Persons needing psychiatric treatment were guaranteed it, but legal and social safeguards had also been introduced. Persons deemed to be in need of psychiatric treatment could seek to contest the decision through recourse to a professional counsel, the procurator or the courts. A procedure also existed for filing complaints. Actions by the Psychiatrist General, without whose authorization a person could not be placed in an institution, were subject to appeal by the person concerned, his representative or a lawyer, in accordance with the law governing the procedure for appeals to the courts against actions by public servants.

12. Mr. Mikhailov and Mr. Sorensen had asked a number of questions on human rights education and training for officials: rather than give a list of educational institutions in which training was carried out, he wished to inform the Committee that a special human rights training programme was being run, under which practically all educational institutions gave special courses on human rights and included the Convention against Torture in their curricula.

13. In reply to Mr. Sorensen's question whether medical treatment was included in compensation to victims of torture, he replied that he was unaware of any cases of torture per se. In 1989, though, there had been seven cases of assault on detainees, in none of which had there been any injury to the victim. Hypothetically speaking, compensation would indeed include treatment at a health resort, for example, but in any case health care in the Ukrainian SSR was free. Nevertheless, if a person did require fee-paying treatment or incurred travel costs to a sanatorium at a health resort, those costs would be borne by the State. Under the law, compensation would be given both for actual and direct injury to health and also for any reduction in fitness to work.

14. Replying to Ms. Chanet's question about measures being taken to rectify past cases of illegal action, he referred to the official notice issued by the Commission to the Supreme Soviet of the Ukrainian SSR and published in the newspaper Soviet Ukraine (the official organ of the Central Committee of Communist Party of the Ukraine and of the Ukrainian Supreme Soviet and Council of Ministers) on 26 January 1990. That notice stated that in cases which had so far undergone judicial review, over 1,100 persons had been rehabilitated, the competent executive committees and associated financial bodies and social security organs had acceded to 250 requests for the return of illegally confiscated property or the rectification of irregular valuations of that property, over 100 families of those rehabilitated had had the accommodation they had lost restored, and 55 rehabilitated persons of pensionable age had had pensions granted or increased.

15. By a Decree of 1956, the Supreme Soviet had recognized as officially rehabilitated all persons who had been unjustly and illegally punished by extra-judicial bodies, special tribunals and the like. By mid-1988, about 310,000 people had been rehabilitated, and they had been followed by a further 120,000 people in the second half of 1988 and in 1989.

16. Ms. Chanet had also inquired whether a lawyer must be present when a person was detained in custody. He replied that, for the moment, a lawyer was not required to be present; however, his country had accepted the norm of the USSR and was in process of implementing it under its own law. That norm was

that a lawyer would be involved from the moment criminal proceedings were begun, in other words, from the moment a person was detained in custody. In reply to another question from Ms. Chanet, he said that a lawyer was not normally present when a person was committed to a mental hospital, although if the person requested the services of a lawyer he could be present. An appeal could be lodged against such committal proceedings.

17. Concerning the matter of steps taken against persons who lodged complaints, he said that the newspaper Izvestiya had in 1989 published an article saying that such events had taken place. It was difficult to say what basis the newspaper had had for its accusations; in the Ukrainian SSR, persecution of people who had made criticisms or lodged complaints was a criminal offence under the relevant article of the Criminal Code.

18. Mr. Burns had asked how many complaints had been lodged against officials and what the results of those complaints had been. It was difficult to give an exact figure as the complaints had been made to various bodies through various channels. According to the Ministry of the Interior's statistics, there had been about 30,000 complaints from people who had served sentences, of which about 2.5 per cent had been upheld.

19. In reply to Mr. Burns' question about how judges and people's assessors were selected and whether application could be made to them for search warrants, he pointed out that in the Soviet Union in general and in the Ukrainian SSR in particular a judicial reform process was under way with a view to implementing the principle of the separation of powers and ensuring that judges were genuinely independent. The selection period for judges had been extended beyond 10 years, and to ensure their independence from the local organs of power, they were selected by a higher Soviet of People's Deputies; i.e. the oblast (province) and Kiev benches were selected by the Supreme Soviet of the Ukrainian SSR while the people's judges were selected, each in his personal capacity, by the Soviet of People's Deputies for the oblast.

20. Judges followed the rule that no action could be taken against any person unless an offence had been committed. They were promoted to the bench on the basis of their professional competence and compliance with the ethical standards of the profession. Mr. Dipanda Mouelle and Mr. Voyame had asked questions about disciplinary tribunals for judges. There were no disciplinary tribunals per se: a judge's colleagues on the bench would meet to consider any breaches of professional ethics he might have committed in the course of his work. When a judge had committed an offence, he could be tried under the Criminal Code only with the permission of the Supreme Soviet; thus, his immunity was safeguarded but at the same time he was not given impunity.

21. In reply to further questions by Mr. Burns, he confirmed that evidence obtained through torture would without reservation be considered inadmissible. Neither was corporal punishment acceptable: the law would regard that as an act of violence against the prisoner and punish it accordingly.

22. Mr. Burns and Mr. Voyame had requested clarification of a decision of the Supreme Court of the Ukrainian SSR relating to penalties against persons exceeding their powers or official authority. That decision had added to the universal norms applied in the administration of justice and sentencing policy in such cases, and had expanded on the second part of article 166 of the

Criminal Code. The definition of the term "violence" had been extended to cover illegal deprivation of liberty, striking, beating, acts of torture, and acts causing actual or grievous bodily harm. All acts of physical torture were therefore covered by the decision of the Supreme Court, which had not, however, stopped at expanding the definition of physical violence: it had expanded the definition to include psychological violence as well. Psychological violence included actual threats of physical or other violence against the person in question or his relatives. The Supreme Court had added that, in the event of bodily harm or death caused either deliberately or through negligence, the matter must be considered not only under part 2 of article 166 but simultaneously under the article of the Criminal Code which covered homicide and bodily harm. The decision of the Supreme Court therefore represented a significant addition to Ukrainian legislation and was consistent with the Convention against Torture, which had directly inspired it.

23. Mr. Dipanda Mouelle had asked how one could be satisfied that a person was innocent. A person's innocence was established by the dropping of a case through the absence of a corpus delicti or the absence of a criminal act, if the person was found not to have participated in the commission of an offence or if the court acquitted him. He confirmed that there were no political prisoners in the Ukrainian SSR.

24. In response to a question about overcrowding in prisons, he recalled that over the past three years the prison population had been halved, to 88,000. The legal norm was a minimum of two square metres per prisoner and two and a half square metres for minors. There was therefore no overcrowding, and the situation would improve further in the longer term when the prison population had been reduced by 60 per cent.

25. A number of questions had been asked concerning custody, pre-trial detention, the rights and obligations of investigators and the division of authority between investigators and procurators, including the ability of procurators to intervene in cases, and the rights of judges. Persons could be detained only when there were grounds for presuming that an offence had been committed and there was likelihood that a person would try to escape the jurisdiction of the court or substantially affect the course of justice. If there were no such grounds, other methods were used, for example, restrictions on the person's right to leave a particular locality without the investigator's permission. It was true that measures such as detention in custody had been more widely used in the past, but nowadays the procurator would consider the gravity of the offence before permitting such measures. The choice of measure was therefore determined on a case-by-case basis.

26. The law was that, whatever organ of inquiry was involved, an investigator, procurator or judge who learned that an offence had been committed was bound to invoke the Criminal Code. Investigators were bound to conduct their investigations, referring to the procurator for approval only with regard to pre-trial procedure (detention or other measure) to be applied. The procurator was required to oversee the whole investigation process, regardless of whether the investigating body was an organ of the Ministry of the Interior, the procurator's office or the Committee for State Security (KGB).

27. If the procurator received a complaint about the investigation or if, in his supervisory role, he found that a breach had been committed, he had the

right to give the necessary instructions on how to conduct the investigation or could even take the case away from an investigator and reassign it. If a case had been raised by the procurator directly, after he had learned that a particular person had committed an offence, he could assign it to a particular investigator. The trend was, in discussion about the investigating bodies, to consider merging them into a single system with a view to strengthening legality and the rights of suspects and defendants. The fact that searches and investigations were conducted by separate authorities sometimes led to the concealment by particular investigators of derelictions of duty during inquiries. There was a case for removing the investigative function from the procurator's office to an independent system under the Ministry of the Interior, which would again strengthen legality. The involvement of the procurator in an investigation would thus become merely supervisory and would assist in eliminating abuses during the conduct of investigations. Under the existing Code of Criminal Procedure, the judge had no control over the investigation process before the case came to court. Only then might the judge, in a personal ruling, choose to return the case to the investigator or put questions about it to him.

28. He apologized for not referring to specific articles of the Code of Criminal Procedure which regulated all the stages of the procedure he had described. The provisions were to be found in many different articles of the Code, and his explanation should be regarded merely as a descriptive outline.

29. He thought he had answered Mr. Voyame's question on paragraph 18 of the report concerning legislative, administrative, judicial and other measures taken to eliminate unlawful conduct such as had been permitted in the past and to prevent it in the future. Many of those actions had been consequent on the Decree of the Praesidium of the Supreme Soviet of the USSR of April 1984, and were in line with the policy of honesty about past breaches of legality which was being pursued throughout the Soviet Union.

30. Mr. Voyame had inquired who exercised systematic supervisory and monitoring functions and what those functions comprised. As he had said, supervision was the prerogative of the procurator's office. Monitoring, however, was carried out, on the official side, by the Committee against Criminality set up under the Praesidium of the Supreme Soviet; a permanent commission of people's deputies was to be set up within the new Supreme Soviet, and would carry out its work in a permanent and publicly visible manner. On the unofficial side, a number of bodies were monitoring the situation, including those commissions of observers set up under the Labour Code and on the basis of a special provision on such commissions established by Decree of the Praesidium of the Supreme Soviet. A number of broadly-based representative bodies were also being set up. The commissions of observers had the right to visit without hindrance all gaols and labour and reform institutions. They could raise questions about whether prisoners were being released on time, and compile reports on breaches of legality and on whether the administration was acting correctly or incorrectly in imposing sanctions on prisoners. Thus, there was supervision and monitoring by both State and unofficial bodies in parallel. The unofficial monitoring groups were becoming particularly active; the current policy of revealing everything that was known about past breaches of the law had caused the population to take a resolute stand against breaches in the present. Whereas in the past it had been possible to turn a blind eye, every case was now being brought out into the light of day.

31. Mr. Voyame had asked, in connection with paragraph 12 of the report, how many cases involving breaches of discipline had been dealt with and what the outcome had been. He replied that of the 365 persons investigated for various breaches in 1989, 247 had been exonerated. Of the remainder, seven had been sentenced for assault, as he had already mentioned.

32. Replying to further questions by Mr. Voyame concerning paragraph 21 of the report, he confirmed that article 3 of the Convention against Torture would protect a person against extradition from the Ukrainian SSR, although his case might not be covered by article 36 of the Ukrainian Constitution. Conventions containing provisions for extradition, such as the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, continued to apply. The Supreme Court of the Ukrainian SSR had in 1989 heard nine actions seeking compensation for damage to health. None of the cases had involved torture.

33. The CHAIRMAN, speaking on behalf of all the members of the Committee, thanked Mr. Bourtchak and the other members of the Ukrainian delegation for their report, which the Committee had noted with great satisfaction, especially the parts relating to the legislative and other measures which had been taken, or were about to be taken, to improve human rights safeguards in general and the implementation of the Convention against Torture in particular. The Committee particularly welcomed the separation of powers and the measures to enhance the independence of judges. It looked forward to reading about the effects of the measures taken in the next report from the Ukrainian SSR.

34. He noted that the Committee had been informed that there was a shortage of lawyers in the Ukrainian SSR and that lawyers were not normally present at the time when a person was detained in custody, although there were plans to rectify that situation. It was particularly important for a lawyer to be present at that time because torture usually occurred in the first hours or days thereafter. Communication with the family could also help prevent torture. He looked forward to hearing that the problems of the shortage of lawyers and the fact that no lawyer was present when a person was detained in custody had been solved by the time the next report of the Ukrainian SSR was transmitted.

35. Mr. BOURTCHAK (Ukrainian Soviet Socialist Republic) thanked the Committee for listening to his observations with such close attention and looked forward to continuing wide-ranging co-operation with it.

36. The members of the delegation of the Ukrainian Soviet Socialist Republic withdrew.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 5) (continued)

37. Mr. BRUNI (Secretary of the Committee) said that the secretariat had already received reports from Spain, Czechoslovakia and Turkey. In addition, the Permanent Mission of Greece to the United Nations Office at Geneva had recently informed the secretariat that the report from Greece would be made available shortly, and the reports on the Netherlands Antilles and Aruba were expected to be ready for the November 1990 session. Cameroon had been asked to submit an additional report by the end of June.

38. After a brief discussion, the CHAIRMAN said that agreement appeared to have been reached on the designation of case rapporteurs and deputy case rapporteurs for the next session of the Committee. If there was no objection, he would take it that the following members would act as case rapporteurs and deputy case rapporteurs respectively: for Spain, Mr. Gil Lavedra and Ms. Diaz Palacios; for Czechoslovakia, Mr. Mikhailov and Ms. Chanet; for Turkey, Mr. Burns and Mr. Sorensen; for Greece, Mr. Khitrin and Mr. Sorensen; for the Netherlands Antilles and Aruba, Mr. Dipanda Mouelle and Mr. Burns; for Cameroon, Ms. Chanet and Mr. Voyame; and for Chile, Ms. Diaz Palacios and Mr. Gil Lavedra.

39. It was so decided.

The public meeting rose at 4.20 p.m.

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COMMITTEE AGAINST TORTURE

Fourth session

SUMMARY RECORD OF THE 54th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 1 May 1990, at 10 a.m.

Chairman: Mr. VOYAME

CONTENTS

Organizational and other matters (continued)

Submission of reports by States parties under article 19 of the Convention

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GE.90-12099/6418A

The meeting was called to order at 10.05 a.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 5) (continued)

1. The CHAIRMAN said that the Government of Argentina had answered the questions put to it by the Committee in paragraph 10 of its decision on the admissibility of the communication concerning Argentina, which had been considered in accordance with article 22 of the Convention. The relevant information would appear in the annexes to the annual report of the Committee.

2. The following members had been designated as rapporteurs and their alternates to consider the reports of States parties: for Spain, Mr. Gil Lavedra and Mrs. Díaz Palacios; for Czechoslovakia, Mr. Mikhailov and Mrs. Chanet; for Turkey, Mr. Burns and Mr. Sørensen; for Greece, Mr. Khitrin and Mr. Sørensen; for the additional report concerning Aruba and the Netherlands Antilles within the framework of the report of the Netherlands, Mr. Dipanda Mouelle and Mr. Burns; and for Cameroon, Mrs. Chanet and Mr. Voyame. In the case of Chile, Mrs. Díaz Palacios and Mr. Gil Lavedra had been designated as rapporteur and alternate, but their designation was perhaps premature in so far as the Committee had apparently not requested Chile officially to submit an additional report.

3. Mr. BRUNI (Secretary of the Committee) drew the Committee's attention to paragraphs 39, 41, 43 and 45 of the summary record of the 41st meeting of the Committee, held on Thursday, 23 November 1989, which showed that the Committee had wished to obtain specific information and statistics on cases of torture in Chile and had requested the Government of Chile to update its report and supply additional information, but not an additional report. In addition, the Chairman had taken the view that a delegation from Chile should come to inform the members of the Committee orally of developments in its country. The representative of Chile had stated, however, that he could not make any commitment to that effect since it was for the new Government to take any such decision.

4. Mr. MIKHAILOV said that the Chairman had been highly diplomatic, particularly in his use of very restrained language, but the fact still remained that he had requested Chile to supply additional information. The Committee should therefore press its request to the Government of Chile to furnish the additional information, which was absolutely indispensable.

5. The CHAIRMAN said he thought that the Committee should abide by what it had said and what was reflected in the summary record of the meeting devoted to the consideration of the report of Chile. Nevertheless, it could remind the Government of Chile that it wished to receive the specific information which it had requested and maintain a dialogue with the Chilean delegation.

6. Mr. KHITRIN proposed that the Committee should draw attention to rules 67 and 68 of its rules of procedure every time it requested additional information from Governments, in order to avoid any misunderstanding on that subject in the future.

7. Mr. GIL LAVEDRA said he supported Mr. Khitrin's proposal. He suggested that the Committee should also ask the new Government of Chile whether it had taken steps to ensure that the Convention against Torture was applied more effectively in Chile.

8. The CHAIRMAN said that it would indeed be useful to ask that question. If he heard no objection, he would take it that the members of the Committee agreed that a reminder to that effect should be sent to Chile. The Committee could then designate, on an informal basis, Mrs. Díaz Palacios and Mr. Gil Lavedra as rapporteur and alternate respectively, should Chile provide the information requested.

9. It was so decided.

10. Mr. BRUNI (Secretary of the Committee), reviewing the status of the Convention against Torture and the reservations and declarations that had been made under the terms of that instrument, said that the Convention had to date been ratified by 52 States and that 24 States parties had made the declaration provided for under article 21, and that 23 States had made the declaration provided for under article 22, the United Kingdom having made only the declaration under article 21. The list of States parties would be included in the annual report of the Committee and had already appeared in the annex to the draft report (CAT/C/CRP.3).

11. The CHAIRMAN said that he was pleased to see that the number of States parties was still growing. He thought it would be useful if, at seminars and conferences, countries which were not parties to the Convention were encouraged to become parties thereto, while those that had ratified it but had entered a reservation on article 20 or had not made the declarations under articles 21 and 22 should be urged to withdraw those reservations and make the declarations.

SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 6)

12. Mr. BRUNI (Secretary of the Committee) drew the Committee's attention to documents CAT/C/10 and CAT/C/5, 7 and 9 containing contained the list of States parties whose initial reports had been due in 1988, 1989 and 1990.

13. In 1988, 27 initial reports had been due and 19 had been submitted. Consideration of the initial report of Spain had, at its request, been postponed until the Committee's autumn 1990 session. In accordance with rule 65 of the Committee's rules of procedure and with the decision adopted at its third session, reminders had been sent on 25 May 1989 and 21 December 1989 to the States parties whose reports were due but had still not been submitted, namely, Afghanistan, Belize, Bulgaria, Luxembourg, Panama, Togo, Uganda and Uruguay.

14. In 1989, six of the 10 initial reports due had been submitted. The report of Czechoslovakia would be considered, at the request of the Czechoslovak Government, at the Committee's following session, and the secretariat had received the initial report of Turkey. The States which had not submitted their reports were Ecuador, Greece, Guyana and Peru. In accordance with the decision taken by the Committee at its third session, a note verbale had been sent to Ecuador. In addition, the Permanent Mission of Greece to the United Nations Office at Geneva had indicated that the report of Greece was ready and would soon be sent to the secretariat. In 1990, only one of the 11 reports due, that of the Netherlands, had been submitted for consideration by the Committee at its current session.

15. The CHAIRMAN suggested that the Committee, in accordance with the principle decided on at its third session, should continue to send a reminder automatically to States parties whose initial report was one year late and, if no reply was received, a further reminder should be sent to them every six months.

16. It was so decided.

17. Mr. BRUNI (Secretary of the Committee) said that the Committee had sent notes verbales on 3 January 1990 to five States parties from which it had requested, at its third session additional information, namely Austria, Denmark, Egypt, Mexico and Norway. The secretariat had so far received additional information only from Mexico, which had been distributed in its original version to the members of the Committee, but the Permanent Mission of Austria had stated that it would soon furnish the additional information on its country. As for Argentina, before it had even received a reminder, it had sent the information requested, which had been placed at the disposal of the members of the Committee. Lastly, in accordance with the decision taken by the Committee following consideration of the initial report of Cameroon at its third session, a note verbale had been sent to the Government of Cameroon, on 21 December 1989, to remind it that a further report should be submitted by 30 June 1990.

18. The CHAIRMAN said that the Committee should act with respect to States which had not submitted the additional information requested in the same way as it acted with respect to States whose initial reports were due but had still not been submitted. In order to obtain answers to its questions, therefore, the Committee should regularly send reminders to such States in just the same way. States which did not heed those reminders would be mentioned in the report to the General Assembly.

19. Mr. SØRENSEN suggested that, in reminders to States parties which had still not sent the additional information requested, the Committee should refer to the relevant paragraphs of the summary records of the meetings at which their reports had been considered. In that way they would know which were the specific points on which the Committee wished to have more precise information.

20. Mr. BRUNI (Secretary of the Committee) assured Mr. Sørensen that, in the notes verbales sent to States parties, the Secretariat did refer to the summary records of meetings and the passages of the annual report in which the Committee's request was recorded. It also explained exactly what information was sought.

The meeting rose at 10.40 a.m.

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COMMITTEE AGAINST TORTURE

Fourth session

SUMMARY RECORD OF THE 55th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 3 May 1990, at 10 a.m.

Chairman: Mr. GIL LAVEDRA

CONTENTS

Adoption of the annual report of the Committee on its activities

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GE.90-12147/6402A

The meeting was called to order at 10.25 a.m.

ADOPTION OF THE ANNUAL REPORT OF THE COMMITTEE ON ITS ACTIVITIES (agenda item 10) (CAT/C/CRP.1 and CAT/C/CRP.1/Add.4-14, CAT/C/CRP.2, CAT/C/CRP.3, CAT/C/CRP.3/Add.1 and 2)

1. The CHAIRMAN invited the members of the Committee to consider the draft annual report to be submitted by the Committee under article 24 of the Convention.

CAT/C/CRP.1 (Chapter I. Organizational and other matters)

2. Document CAT/C/CRP.1 was adopted.

CAT/C/CRP.1/Add.4 (Chapter IV. Consideration of reports submitted by States parties under article 19 of the Convention, France)

3. Document CAT/C/CRP.1/Add.4 was adopted.

CAT/C/CRP.1/Add.5 (Chapter IV. Consideration of reports submitted by States parties under article 19 of the Convention, Switzerland)

4. Document CAT/C/CRP.1/Add.5 was adopted.

CAT/C/CRP.1/Add.6 (Chapter IV. Consideration of reports submitted by States parties under article 19 of the Convention, Union of Soviet Socialist Republics)

5. Document CAT/C/CRP.1/Add.6 was adopted.

CAT/C/CRP.1/Add.7 (Chapter V. Consideration of reports submitted by States parties under article 19 of the Convention, Argentina)

6. Document CAT/C/CRP.1/Add.7 was adopted.

CAT/C/CRP.1/Add.8 (Chapter IV. Consideration of reports submitted by States parties under article 19 of the Convention, German Democratic Republic)

7. Mr. DIPANDA MOUELLE remarked that in the first sentence of paragraph 3 of the document under consideration, the word "now" was inappropriate and proposed that it should be replaced by the term "at present".

8. The CHAIRMAN observed that no adverb of time appeared in the Spanish version and suggested that it should be left to the secretariat to standardize the different versions.

9. Mr. MIKHAILOV said that the French text appeared to be correct and that it was not the responsibility of the secretariat to decide on the wording of the Committee's report.

10. The CHAIRMAN suggested that no adverb of time should be used in the first sentence of the third paragraph in any of the language versions.

11. It was so decided.

12. Document CAT/C/CRP.1/Add.8, as orally amended, was adopted.

CAT/C/CRP.1/Add.9 (Chapter IV. Consideration of reports submitted by States parties under article 19 of the Convention, Byelorussian Soviet Socialist Republic)

13. Mr. DIPANDA MOUELLE said he was surprised at the almost ubiquitous use of the indefinite article "des" before the word "membres" in the French version of the document under consideration, when in the part of the same chapter of the report dealing with the USSR, only the definite article "les" was used before "membres". He wondered whether it was more appropriate to speak of "des membres" or "les membres", depending on whether all the members of the Committee or only some of them had raised a given question, or whether the Committee should not be considered as a whole and the term "les membres" used throughout the report.

14. Mr. MIKHAILOV said that he wished the existing French text to be kept and thought it normal for a distinction to be made between "les membres" and "des membres", depending on whether or not all the Committee members were involved. In his view, the shade of meaning should be maintained.

15. The CHAIRMAN pointed out that, in the Spanish text, the definite article "los" was used systematically. He was in favour of standardizing the different language versions, whether it was decided to refer to some members of the Committee or to view members as a whole, and he felt that the document under consideration should be brought into line with the documents already adopted and with the Committee's previous report.

16. Mr. HOUSHMAND (Representative of the Secretary-General) observed that at the present stage, time did not permit the four language versions of the draft report to be harmonized. That harmonization would, however, be done in Geneva and then in New York by the United Nations Official Records Editing Section.

17. Mr. BURNS observed that both Mr. Dipanda Mouelle and Mr. Mikhailov were right. In order to avoid any discrepancy between the different versions of the report, it would be better to follow Mr. Dipanda Mouelle's suggestion and use the same phrase consistently, in the present instance, "the members". Mr. Mikhailov had been correct in saying that not all the members but only some of them had asked the questions concerned, but that was a matter of only minor importance and the Committee should not dwell on it.

18. Mr. SØRENSEN agreed with Mr. Burns. The problem of syntax should not be a difficult one to solve and the Committee should leave it to the secretariat to settle questions of form and concentrate on substantive matters.

19. Mr. DIPANDA MOUELLE said that he had no special preference for either the definite or the indefinite article. He was simply pointing out that the definite article "les" had been used in other parts of the chapter under consideration, but it was obvious that not all the members had asked the same questions. It would perhaps be best to harmonize the different versions and use the same formula throughout the report.

20. Mr. MIKHAILOV remarked that the two formulations used in the French version of document CAT/C/CRP.1/Add.9 were correct and accurately reflected what had taken place. He therefore saw no need to reword the document under consideration and proposed that the Committee should adopt it in its present form and proceed to the next document.

21. The CHAIRMAN said he believed that the problem was basically one of translation. The text of a document should, however, be identical in all the languages and harmonization was obviously needed. He therefore suggested that the secretariat should be asked to go through the documents that had been adopted by the Committee and correct any mistakes that might have crept into the different versions and that the Committee should adopt document CAT/C/CRP.1/Add.9 as it stood. If there were no objections, he would take it that the Committee endorsed his suggestion.

22. It was so decided.

CAT/C/CRP.1/Add.10 (Chapter IV. Consideration of reports submitted by States parties under article 19 of the Convention, Canada)

23. Document CAT/C/CRP.1/Add.10 was adopted.

CAT/C/CRP.1/Add.11 (Chapter IV. Consideration of reports submitted by States parties under article 19 of the Convention, Cameroon)

24. Document CAT/C/CRP.1/Add.11 was adopted.

CAT/C/CRP.1/Add.12 (Chapter IV. Consideration of reports submitted by States parties under article 19 of the Convention, Hungary)

25. Mr. SØRENSEN observed that in paragraph 33, reference was made for the first time to "the Committee" and not to "members of the Committee" as had usually been the case. He thought that it might perhaps be better to use the same formulations as those in the other documents which had already been adopted.

26. Document CAT/C/CRP.1/Add.12, as orally amended, was adopted.

CAT/C/CRP.1/Add.13 (Chapter IV. Consideration of reports submitted by States parties under article 19 of the Convention, Colombia)

27. Document CAT/C/CRP.1/Add.13 was adopted.

CAT/C/CRP.1/Add.14 (Chapter IV. Consideration of reports submitted by States parties under article 19 of the Convention, Chile)

28. Mr. SØRENSEN said that at the end of paragraph 35 it would be better to say "the Committee welcomed the offer ..." rather than "the members of the Committee ...", since the reference was to the position taken by the Committee as a whole and to the conclusion it had reached after considering the report of Chile.

29. Document CAT/C/CRP.1/Add.14, as orally amended, was adopted.

The meeting was suspended at 11.45 a.m. and resumed at 11.55 a.m.

CAT/C/CRP.2 (Chapter V. Consideration of communications under article 22 of the Convention)

30. Mr. BURNS (Rapporteur) suggested that, as the Government of Argentina had submitted the additional information requested, the following addition should

be made to the end of paragraph 13: "The Committee indicated that it would welcome receiving from the State party detailed information concerning (a) the number of successful claims for compensation for victims of acts of torture during the 'dirty war' or for the dependants, and (b) such pension schemes as may exist, apart from compensation for the victims of torture or their dependants, including the criteria for eligibility for such pensions. A reply from the State party was transmitted to the Committee under cover of a note from the Permanent Mission of Argentina to the United Nations Office at Geneva, dated 12 March 1990."

31. He also proposed the following addition to the end of paragraph 14: "The text of the State party's reply is reproduced in annex VI." It was understood that the secretariat might modify the numbering of the annexes.

32. It was so decided.

33. Document CAT/C/CRP.2, as orally amended, was adopted.

CAT/C/CRP.3 (Annexes I, II and III)

34. Mr. SØRENSEN noted that the name of the rapporteur on the first page should be amended to read "Mr. Burns", since he had replaced Mr. Mikhailov.

35. It was so decided.

36. Document CAT/C/CRP.3, as orally amended, was adopted.

CAT/C/CRP.3/Add.1 (Annex IV)

37. Document CAT/C/CRP.3/Add.1 was adopted.

CAT/C/CRP.3/Add.2 (Annex V)

38. Mr. SØRENSEN observed that the amendment adopted for document CAT/C/CRP.3 was also valid for the document under consideration and it should also be recorded on the first page that the rapporteur was Mr. Burns and not Mr. Mikhailov.

39. It was so decided.

40. Document CAT/C/CRP.3/Add.2, as orally amended, was adopted.

The meeting rose at 12.10 p.m.

UNITED
NATIONS

CAT

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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COMMITTEE AGAINST TORTURE

Fourth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 56th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, [illegible]y 1990, at 4 p.m.

Chairman: Mr. GIL LAVEDRA

CONTENTS

Adoption of the annual report of the Committee on its activities (continued)

* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.56/Add.1.

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Commission at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.90-12155/6237A

The meeting was called to order at 4.25 p.m.

ADOPTION OF THE ANNUAL REPORT OF THE COMMITTEE ON ITS ACTIVITIES (agenda item 9) (continued) (CAT/C/CRP.1/Add.3, Add.15 and Add.16)

Chapter IV: Consideration of reports submitted by States parties under article 19 of the Convention

Senegal (CAT/C/CRP.1/Add.15)

1. Mr. KHITRIN, referring to paragraph 30 of the document, said it should be stipulated whether the additional information mentioned had been requested pursuant to rule 67 or to rule 68 of the rules of procedure.

2. Mr. SORENSEN and Mr. MIKHAILOV agreed with that remark.

3. Mr. HOUSHMAND (Representative of the Secretary-General), supported by Mr. BURNS (Rapporteur), suggested that, in collaboration with the Rapporteur, the secretariat should make the necessary change to the draft annual report of the Committee before the Committee adopted the report as a whole.

4. It was so decided.

5. Mr. MIKHAILOV said he objected to the use of the word "excellent" in paragraph 29 of the document. It was not for the Committee to qualify the reports of States in that manner.

6. After a short discussion, the CHAIRMAN suggested that the secretariat, in consultation with the Rapporteur, should examine that and other similar instances and make any modifications required, in the light of the Committee's comments, before the Committee adopted its draft annual report as a whole.

7. It was so decided.

8. Document CAT/C/CRP.1/Add.15 was adopted on that understanding.

Tunisia (CAT/C/CRP.1/Add.16)

9. The CHAIRMAN said he took it that the Committee would wish to apply the same procedure it had adopted for the previous document in respect of the word "excellent" in paragraph 29 and in respect of the insertion of a reference to rule 67 or rule 68 of the rules of procedure in the same paragraph.

10. It was so decided.

11. Document CAT/C/CRP.1/Add.16 was adopted on that understanding.

Chapter III: Submission of reports by States parties under article 19 of the Convention

Revision of general guidelines for the submission of initial reports by States parties (CAT/C/CRP.1/Add.3)

12. Mr. MIKHAILOV noted the reference in paragraph 3 of the document to the second reminder concerning the submission of an initial report that had been

sent to the Ukrainian SSR. The fact that the Ukrainian SSR had subsequently submitted an initial report should also be reflected in the document, possibly by means of a foot-note.

13. Mr. SORENSEN recalled that the Committee had decided to send reminders to States which had not supplied supplementary material requested by the Committee, and suggested that the secretariat should be asked to draft a new paragraph, to be inserted before existing paragraph 9, to reflect that decision.

14. Mr. BURNS (Rapporteur) said that he would make the relevant changes to the document before the Committee adopted its draft annual report as a whole.

15. Document CAT/C/CRP.1/Add.3 was adopted on that understanding.

The public meeting rose at 5.05 p.m.

UNITED
NATIONS

CAT

Convention against Torture
and Other Cruel, Inhuman
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COMMITTEE AGAINST TORTURE

Fourth session

SUMMARY RECORD OF THE 57th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 4 May 1990, at 10 a.m.

Chairman: Mr. VOYAME

CONTENTS

Adoption of the annual report of the Committee on its activities (continued)

Closure of the session

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

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GE.90-12151/6424A

The meeting was called to order at 10.15 a.m.

ADOPTION OF THE ANNUAL REPORT OF THE COMMITTEE ON ITS ACTIVITIES (agenda item 10) (continued) (CAT/C/CRP.1/Add.1 and Add.2 and Add.17-20; CAT/C/CRP.2/Add.1; CAT/C/CRP.3/Add.3 and Add.4)

CAT/C/CRP.1/Add.1 (Chapter I. Organizational and other matters)

1. Mr. BURNS (Rapporteur), proposing some drafting changes to the English text of the document, which was not yet available in the other languages, said that the words "As regards" in paragraphs 11 and 12 should be replaced by "Regarding", the word "were" should be inserted between "Special Rapporteur" and "different" in the third line of paragraph 17, and the word "statute" in the second line of paragraph 19 should be replaced by "status".

2. Document CAT/C/CRP.1/Add.1, as orally amended, was adopted.

CAT/C/CRP.1/Add.2 (Chapter II. Action by the General Assembly at its forty-fourth session)

3. Document CAT/C/CRP.1/Add.2 was adopted.

CAT/C/CRP.1/Add.17 (Chapter IV. Consideration of reports submitted by States parties under article 19 of the Convention: Netherlands)

4. Mr. BURNS (Rapporteur) proposed that a reference to paragraph 2 of rule 77 of the rules of procedure should be inserted in paragraph 35 of the document, in the following manner: "... the representative agreed that, pursuant to rule 77, paragraph 2 of the Committee's rules of procedure, a further report on Aruba would be submitted ...".

5. It was so decided.

6. The CHAIRMAN, noting that the document was available only in English, asked whether Committee members were prepared to consider it in that language only.

7. At the request of Mr. MIKHAILOV, Mr. BURNS (Rapporteur) read out paragraph 36 of the document in English, simultaneous interpretation into the other working languages being provided.

8. Document CAT/C/CRP.1/Add.17 was adopted.

9. The CHAIRMAN suggested that the meeting should be suspended to enable Committee members to study documents CAT/C/CRP.1/Add.18 and Add.19, which were available only in the original language in which they had been drafted, i.e., partly in English and partly in French.

The meeting was suspended at 10.35 a.m and resumed at 10.55 a.m.

CAT/C/CRP.1/Add.18 (Chapter IV. Consideration of reports submitted by States parties under article 19 of the Convention: China)

10. Mr. BURNS (Rapporteur) read out paragraphs 30-32 of the document in English, simultaneous interpretation into the other working languages being provided.

11. Mr. MIKHAILOV, recalling that the Committee had expressed regret at the absence from the report of China of a section devoted specifically to the implementation of the Convention article by article, proposed that that fact should be mentioned in paragraph 31 and that a reference to the Committee's general guidelines on the preparation of reports should also be inserted in that paragraph.

12. It was so decided.

13. Document CAT/C/CRP.1/Add.18, as orally amended, was adopted.

CAT/C/CRP.1/Add.19 (Chapter IV. Consideration of reports submitted by States parties under article 19 of the Convention: Ukrainian Soviet Socialist Republic)

14. Mr. BURNS (Rapporteur), referring to paragraph 23 of the document, asked whether the period during which a person could be held for administrative offences really was three hours.

15. Mr. KHITRIN confirmed that that was the case.

16. Mr. BURNS (Rapporteur) read out paragraph 30 in English, simultaneous interpretation into the other working languages being provided.

17. Mr. GIL LAVEDRA, recalling that major legislative reforms were in progress in the Ukrainian Soviet Socialist Republic, expressed the wish that the Committee should request that country, as it had done in the case, for instance, of the German Democratic Republic, to include in its next periodic report an account of the changes taking place.

18. The CHAIRMAN suggested that the Rapporteur and the Secretariat should be entrusted with adding a sentence to that effect.

19. It was so decided.

20. Mr. DIPANDA MOUELLE suggested that the word "elderly" should be inserted before "persons" in paragraph 5 and that the word "appreciation" in paragraph 17 should be replaced by "satisfaction".

21. The CHAIRMAN associated himself with those suggestions and proposed that the secretariat should be entrusted with correcting inaccurate or infelicitous drafting throughout the text.

22. It was so decided.

23. Document CAT/C/CRP.1/Add.19, as orally amended, was adopted.

CAT/C/CRP.1/Add.20 (Chapter IV bis. Consideration of information received under article 20 of the Convention)

24. Mr. GIL LAVEDRA said that, in his opinion, paragraph 4 of the document failed to go into sufficient detail. It did not reflect the fact that the Committee had held closed meetings and had spent a great deal of time working on information submitted under article 20 of the Convention.

25. Mr. MIKHAILOV suggested that, in order to meet the point raised by Mr. Gil Lavedra and to make the text read more logically, the order of the sentences in paragraph 4 should be reversed.

26. The CHAIRMAN associated himself with that suggestion.

27. Mr. SØRENSEN suggested that a reference to the three closed meetings held by the Committee should be included so as to make it quite clear that the Committee had given the item thorough consideration.

28. At the request of the CHAIRMAN, Mr. HOUSHMAND (Representative of the Secretary-General) proposed a new version of paragraph 4, in which the first sentence of the existing text would become the second sentence of the paragraph and would end with the words "three closed meetings being devoted to the item".

29. Mr. BURNS (Rapporteur) wondered whether it would not be appropriate to go even further along the lines suggested by Mr. Gil Lavedra by indicating that the Committee had taken certain steps in the matter.

30. Mr. HOUSHMAND (Representative of the Secretary-General) recalled the requirement of confidentiality under article 20 of the Convention.

31. Mr. BURNS (Rapporteur) said that his proposal would not entail any breach of the confidential nature of the consideration of information received under article 20 of the Convention, since neither the subject of the information received nor the name of the country would be mentioned. He was, however, prepared to accept the proposed new wording.

32. The CHAIRMAN suggested that the new version of paragraph 4, as formulated by Mr. Houshmand, should be adopted.

33. It was so decided.

34. Document CAT/C/CRP.1/Add.20, as orally amended, was adopted.

CAT/C/CRP.3/Add.3 (Chapter VI. Reply from the Government of Argentina)

35. The CHAIRMAN suggested that the text of the document should be annexed to the Committee's report.

36. It was so decided.

37. Document CAT/C/CRP.3/Add.3 was adopted.

CAT/C/CRP.3/Add.4 (Chapter VII. Draft consolidated guidelines for the initial part of the reports of States parties as approved by the Committee against Torture at its 49th meeting, on 26 April 1990)

38. The CHAIRMAN suggested that the text of the document should be annexed to the Committee's report.

39. It was so decided.

40. Document CAT/C/CRP.3/Add.4 was adopted.

CAT/C/CRP.2/Add.1 (Chapter VI. Adoption of the annual report of the Committee on its activities)

41. Mr. DIPANDA MOUELLE pointed out the name of Mr. Mikhailov appeared in error on page 1 of the document in place of the name of Mr. Burns, the Committee's Rapporteur.

42. Document CAT/C/CRP.2/Add.1, as orally amended, was adopted.

43. The CHAIRMAN invited members of the Committee to approve the annual report as a whole.

44. The annual report of the Committee on its activities was adopted unanimously.

CLOSURE OF THE SESSION

45. After an exchange of courtesies, the CHAIRMAN declared the session closed.

The meeting rose at 11.30 a.m.